

**SESSION LAWS**  
**OF**  
**HAWAII**  
**PASSED BY THE**  
**TWENTY-THIRD STATE LEGISLATURE**  
**STATE OF HAWAII**

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**REGULAR SESSION**  
**2005**

Convened on Wednesday, January 19, 2005 and  
Adjourned sine die on Thursday, May 5, 2005

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**SPECIAL SESSION**  
**2005**

Convened on Tuesday, July 12, 2005 and  
Adjourned sine die on July 12, 2005

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Revisor of Statutes  
State of Hawaii  
Honolulu, Hawaii

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## PREFACE

This volume contains all of the laws enacted by the Hawaii State Legislature during the Regular and Special Sessions of 2005.

The text of the laws is printed in full except for laws repealing existing statutes. With the exception of certain obvious typographical errors which have been corrected, the text of the laws as enacted is followed.

Statutory material that is being repealed is either bracketed or bracketed and stricken. New material is indicated by underscoring. As authorized by Section 23G-16.5, Hawaii Revised Statutes, the text is edited to omit the bracketed material for HRS sections being repealed in their entirety, and to omit the underscoring for new HRS sections.

Explanatory notes appear at the end of the corresponding laws. The notes clarify editorial changes and inconsistencies in text.

Ken H. Takayama  
Revisor of Statutes

Honolulu, Hawaii  
July 12, 2005

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Daniel K. Akaka

House of Representatives:  
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Ed Case

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2005**

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Vice President ..... Donna Mercado Kim  
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**Session Laws of Hawaii  
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**ACT 1**

S.B. NO. 543

A Bill for an Act Making Appropriations to Provide for the Expenses of the Legislature, the Auditor, the Legislative Reference Bureau, and the Ombudsman.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. There is appropriated out of the general revenues of the State of Hawaii the sum of \$6,116,084 or so much thereof as may be necessary for defraying any and all session and nonsession expenses of the Senate up to and including June 30, 2006, including the 2005 regular session, Twenty-third Legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 2005 and 2006 regular sessions.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$8,776,077 or so much thereof as may be necessary for defraying any and all session and nonsession expenses of the House of Representatives up to and including June 30, 2006, including the 2005 regular session, Twenty-third Legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 2005 and 2006 regular sessions.

SECTION 3. Payment of expenses of the Senate during the interim between the 2005 and 2006 regular sessions shall be made only with the approval of the President of the Senate, and payment of expenses of the House of Representatives during the interim between the 2005 and 2006 sessions shall be made only with the approval of the Speaker of the House of Representatives.

SECTION 4. Before January 18, 2006, the Senate and the House of Representatives shall each have their accounts audited and a full report of the respective audits shall be presented to the Senate and to the House of Representatives convening on January 18, 2006.

SECTION 5. Unless otherwise prescribed by law, the expenses of any member of the Legislature while traveling abroad on official business of the Legislature shall be \$130 a day as authorized by the President of the Senate and the Speaker of the House of Representatives, respectively.

## ACT 1

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$3,405,252 or so much thereof as may be necessary to the office of the auditor for the following expenses:

- (1) The sum of \$2,513,352 for defraying the expenses of the office of the auditor during fiscal year 2005-2006;
- (2) The sum of \$741,900 for defraying the expenses of the office of the state ethics commission during fiscal year 2005-2006; and
- (3) The sum of \$150,000 during fiscal year 2005-2006 for:
  - (A) Performing special studies;
  - (B) Improving capabilities for planning, programming, and budgeting;
  - (C) Fulfilling other special requests made of the auditor by the Legislature or jointly by the President of the Senate and the Speaker of the House of Representatives;
  - (D) Legislative studies and contractual services for those studies; and
  - (E) Such other purposes as may be determined by the joint action of the President of the Senate and the Speaker of the House of Representatives.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,500,000 or so much thereof as may be necessary to the office of the auditor during fiscal year 2005-2006 to be deposited into the audit revolving fund established pursuant to section 23-3.6, Hawaii Revised Statutes.

SECTION 8. There is appropriated out of the audit revolving fund the sum of \$3,013,125 or so much thereof as may be necessary to the office of the auditor during fiscal year 2005-2006 for the following expenses:

- (1) The comprehensive annual financial report of the State; and
- (2) The financial statement and single audits of:
  - (A) The department of human services, excluding the housing and community development corporation of Hawaii;
  - (B) The department of health;
  - (C) The department of education; and
  - (D) The department of transportation, specifically:
    - (i) The administration of the department;
    - (ii) The Oahu metropolitan planning organization; and
    - (iii) The airports, harbors, and highways divisions.

SECTION 9. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,663,198 or so much thereof as may be necessary to the legislative reference bureau for defraying the expenses of the legislative reference bureau during fiscal year 2005-2006, including equipment relating to computer systems programming and operations.

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of \$881,170 or so much thereof as may be necessary to the office of the ombudsman for defraying the expenses of the office during fiscal year 2005-2006.

SECTION 11. There is appropriated out of the general revenues of the State of Hawaii the following sums or so much thereof as may be necessary for defraying the expenses of the legislative information system:

- (1) \$600,000 to the Senate; and
- (2) \$600,000 to the House of Representatives.



This appropriation shall be used to pay for hardware, software, consultant, installation, material, supply, and other related costs associated with the legislative information system that have been or will be incurred.

SECTION 12. There is appropriated out of the general revenues of the State of Hawaii the sum of \$175,000 or so much thereof as may be necessary for the legislative broadcast program, including the production and distribution of television broadcasts of legislative proceedings. This appropriation shall be expended by the Legislature for the purposes of this section.

SECTION 13. Act 1, Session Laws of Hawaii 2004, is amended by amending section 13 to read as follows:

“SECTION 13. [As] Except for moneys in the audit revolving fund, as of the close of business on June 30, 2005, the unexpended or unencumbered balance of any appropriation made by this Act shall lapse into the general fund.”

SECTION 14. Except for moneys in the audit revolving fund, as of the close of business on June 30, 2006, the unexpended or unencumbered balance of any appropriation made by this Act shall lapse into the general fund.

SECTION 15. Each section of this Act is declared to be severable from the remainder of this Act.

SECTION 16. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 17. This Act shall take effect upon its approval.

(Approved February 7, 2005.)

## ACT 2

S.B. NO. 119

A Bill for an Act Relating to the Continuing Education of Design Professionals.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The continual evolution of knowledge on how to construct buildings with increased resistance to natural forces, energy efficiency, environmental sustainability, indoor air quality, building security, and accessibility for persons with disabilities makes it imperative that architects continually upgrade their knowledge and be aware of changes to ensure that future construction in Hawaii meets high standards of health and public safety. By requiring licensed architects to fulfill a continuing education program in order to renew their license, reciprocal licensing of architects among jurisdictions that are increasingly adopting mandatory continuing education requirements would be facilitated. A progressively-educated architectural profession will strengthen Hawaii's competitive position as an exporter of design services beyond the State and the nation.

The purpose of this Act is to require every architect licensed in the State of Hawaii to fulfill a program of continuing education for license renewal.

SECTION 2. Section 464-9, Hawaii Revised Statutes, is amended to read as follows:

**“§464-9 Applications for and certificates of licensure; renewal; fees[-]; continuing education.** (a) Application for licensure shall be made upon a form prescribed by the board and shall be signed by the applicant. With each application there shall be paid to the board [~~an~~] a nonrefundable application fee~~[-, the fee to be nonreturnable after the application has been entered in the records of the board]~~.

For each examination, or repetition thereof in whole or in part as shall be limited or permitted by the rules of the board, the candidate shall pay to the board an examination fee; provided where the candidate is eligible to take only that part of the examination pertaining to engineering fundamentals the candidate shall pay the appropriate fee. The fee paid shall not be refundable; provided if a candidate after having paid the fee is unable for any reason beyond the candidate’s control to participate in the examination, the board may extend the time of the candidate’s participation to the next regular examination date and credit the candidate the amount of the fee paid.

(b) Upon qualifying for licensure, the applicant shall pay a license fee, and upon receipt thereof by the board shall thereupon be licensed as a professional engineer, architect, land surveyor or landscape architect, and shall receive a certificate thereof from the board signed by the chairperson [~~and secretary~~]. Every person licensed who, as an individual or as a member of a firm or corporation, conducts an office or other place of business for the practice of the profession shall display the original certificate in a conspicuous manner, in the principal office or place of business.

(c) Every license expires on April 30 of each even-numbered year following its issuance and becomes invalid after that date unless renewed. At least one month in advance of the date of expiration of the license, a notice shall be mailed to every person licensed under this section informing them of the date of expiration and the amount required for the renewal. Licenses that have expired for failure to pay renewal fees on or before the date required in this subsection may be restored within two years of the expiration date upon payment of a fee for each renewal. Any person who fails to restore the person’s license within two years of the date of its expiration shall reapply for licensure[-] as a new applicant and meet the requirements in effect at that time.

(d) The board shall require continuing education to renew a license for architects effective as of the renewal date for a license expiring on April 30, 2008, and for every biennial renewal period thereafter. All continuing education courses shall be relevant to public protection subjects and shall be approved by the board as provided in the board’s rules; provided that:

- (1) Architects initially licensed in the first year of the biennium shall have completed eight continuing education credit hours;
- (2) Architects initially licensed in the second year of the biennium shall not be required to complete any continuing education credit hours;
- (3) All other architects shall have completed sixteen continuing education credit hours;
- (4) The board shall randomly audit an architect’s continuing education courses, and shall establish guidelines for random audits in rules adopted in accordance with chapter 91;
- (5) An architect whose license is not renewed because of failure to comply with the continuing education requirement shall have two years from the expiration date of the license to restore the license by complying with all applicable continuing professional education requirements and paying the appropriate renewal and penalty fees. After the two-year restoration period, the licensee shall be required to apply as a new applicant, and meet the requirements in effect at that time; and

- (6) An architect licensee shall not be subject to the continuing education requirement if the architect otherwise meets all other renewal requirements and:
- (A) Is a member of the armed forces, national guard, or a reserve component on active duty and deployed during a state or national crisis as "state or national crisis" is defined in chapter 436B;
  - (B) Is ill or disabled for a significant period of time as documented by a licensed physician, and is unable to meet the continuing education requirements of this subsection;
  - (C) Can demonstrate undue hardship that prevented the licensee from meeting the continuing education requirements of this subsection; or
  - (D) Is retired from the practice of architecture and is no longer performing or providing architectural services;
- provided that any exemption from the continuing education requirements shall be subject to the board's approval.'

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2005.

(Approved April 8, 2005.)

## ACT 3

S.B. NO. 73

A Bill for an Act Relating to Highway Safety.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 286-209, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Motor carrier vehicles including but not limited to trucks, truck-tractors, semitrailers, trailers, or pole trailers having a gross vehicle weight rating of more than 10,000 pounds, and motor carrier vehicles having a gross vehicle weight rating of 10,000 pounds or less which transport passengers in the furtherance of a commercial enterprise, including car rental transport vehicles shall be inspected and certified once every twelve months[-] during the month in which the vehicle's certificate of motor vehicle registration is issued."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on January 1, 2006.

(Approved April 8, 2005.)

ACT 4

ACT 4

H.B. NO. 291

A Bill for an Act Relating to Advisory Committee on Pesticides.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 149A-51, Hawaii Revised Statutes, is amended to read as follows:

“**§149A-51 Advisory committee.** There shall be an advisory committee on pesticides composed of but not limited to the chairperson, or the chairperson’s designated representative, who shall head the committee and one representative each from the department of health, department of land and natural resources, University of Hawaii college of tropical agriculture and human resources, sugar industry, pineapple industry, Hawaii Farm Bureau Federation, pesticide industry, structural pest control industry, an environmental organization, a citizen group, and [~~one at-large public member.~~] a landscape professional. Members of the advisory committee shall be appointed by the governor from a list of persons recommended by the respective agencies and industries in accordance with section 26-34. The committee shall advise and assist the department in developing or revising laws and rules to carry out and effectuate the purposes of this chapter and in advising the department in pesticide problems.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on June 30, 2005.

(Approved April 14, 2005.)

ACT 5

H.B. NO. 78

A Bill for an Act Relating to Number Plates.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 249-11, Hawaii Revised Statutes, is amended to read as follows:

“**§249-11 Fraudulent use of plates, tags, or emblems and other misdemeanors; penalties.** (a) Any person who manufactures, sells, or distributes vehicle number plates, tags, or emblems of a design and size similar to the currently issued series of number plates, tags, or emblems authorized by the director of finance, or who attaches to and uses on any vehicle plates, tags, or emblems not furnished in accordance with sections 249-1 to 249-13 or 286-53, or who fraudulently uses such number plates, tags, or emblems upon any vehicle other than the one for which the number plates, tags, or emblems were issued, or who molests or disturbs any vehicle which has been seized pursuant to sections 249-1 to 249-13, or any person who knowingly uses a motor vehicle, the tax upon which is delinquent, upon public highways of this State, or any director of finance who issues a certificate of registration or number plates, tags, or emblems to any person who has not paid the tax required by sections 249-1 to 249-13, or any person who violates any of the provisions of such sections, shall be fined not more than \$500.

(b) It shall be unlawful for any person to manufacture, sell, display, permit to be displayed, or possess any reproduction, imitation, or facsimile of a license plate with a similar design, shape, size, and color as the license plates contracted for the director of finance of the city and county of Honolulu pursuant to section 249-9.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 14, 2005.)

**ACT 6**

S.B. NO. 778

**A Bill for an Act Making an Emergency Appropriation for Services to Children with Autism Spectrum Disorder, and for School-Based Behavioral Health Services.**

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. The purpose of this Act is to appropriate funds to enable payment for services to children with autism spectrum disorder and for school-based behavioral health services.

SECTION 3. The number of students requiring services for autism spectrum disorder, the intensity of services required, and the hours during which services must be provided have all increased since the program responsibility and funding were transferred to the department of education from the department of health. The number of students requiring school-based behavioral health services had also increased. An emergency appropriation is needed to fund the increased costs for required services.

A critical funding emergency exists in fiscal year 2004-2005. The department of education will not have sufficient funds to pay for required services with the current appropriation amount.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$11,672,564, or so much thereof as may be necessary for fiscal year 2004-2005 for increased costs due to an increase in required services to students with autism spectrum disorder and in school-based behavioral health services.

The sum appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 15, 2005.)

A Bill for an Act Making an Emergency Appropriation for Early Intervention Services.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. Although funds were appropriated to the department of health for the family health services division for the period beginning July 1, 2004, and ending June 30, 2005, a critical need for further funding exists based on an April 16, 2004 federal court stipulation for step-down plan and termination of the revised consent decree between the State of Hawaii and the plaintiff class in *Felix v. Lingle*, Civil No. 93-00367. Pursuant to this stipulation, the department of health must continue to carry out its statutory obligations to the plaintiff class, provide services as mandated by the Individuals with Disabilities Education Act, maintain a system of care for the plaintiff class, and assure that eligible children will receive specified services in a consistent and timely manner.

The department of health provides early intervention services for children age 0-3 years with a developmental delay or biological/environmental risk, as mandated by Individuals with Disabilities Education Act, part C. The department must ensure that eligible children and their families receive the Individuals with Disabilities Education Act, part C mandated services identified on their individual family support plan.

Existing funds will be expended before the end of this fiscal year. This is due to the need to provide early intervention services required by the stipulation for step-down plan and termination of the revised consent decree; an increased number of children eligible for and in need of early intervention services because of a developmental delay or biological risk; an increased number of children to be referred for early intervention services due to regulations in the Child Abuse Prevention and Treatment Act; the Individuals with Disabilities Education Act, part C requirement for early intervention services to be provided in the family's natural environment of home and community settings; the additional cost to transition children from fee-for-service to purchase-of-service early intervention providers; and the additional cost to ensure that all children referred for early intervention services receive a multi-disciplinary comprehensive developmental evaluation as required by Individuals with Disabilities Education Act, part C.

The purpose of this Act is to increase the authorized special fund appropriation for early intervention services by \$981,719 for the family health services division of the department of health for fiscal year 2004-2005 to ensure compliance with the stipulation for step-down plan and termination of the revised consent decree in Civil No. 93-00367, filed April 16, 2004.

SECTION 3. The General Appropriations Act of 2003, Act 200, Session Laws of Hawaii 2003, Part II, section 3, item E.13, as amended by the Supplemental Appropriations Act of 2004, Act 41, Session Laws of Hawaii 2004, is amended to read as follows:

|  |     |             |                    |
|--|-----|-------------|--------------------|
| “13. HTH-595 – Health Resources Administration |     | 32.00*      | 27.00*             |
| Operating                                      | HTH | 3,653,656A  | 3,375,877A         |
|  |     | 2.00*       | 2.00*              |
|  | HTH | 52,842,603B | [52,998,860B]      |
|  |     |             | <u>53,980,579B</u> |
|  | HTH | 6.50*       | 6.50*              |
|  | HTH | 817,504N    | 817,362N           |
| Investment Capital                             | HTH | 750,000C    | 3,220,000C”        |

SECTION 4. The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved April 15, 2005.)

ACT 8

H.B. NO. 79

A Bill for an Act Relating to Special Number Plates.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 249-9.3, Hawaii Revised Statutes, is amended to read as follows:

“§249-9.3 Special number plates; design and issuance by counties. (a) In lieu of the number plates contracted on behalf of the counties by the director of finance of the city and county of Honolulu, the county directors of finance shall issue special number plates to any organization in the State that meets the minimum standards and qualifications established under this section. Organizations are authorized to retain the fees collected, less expenses, for the special number plates.

The director of finance of the city and county of Honolulu, in consultation with the directors of finance of the counties of Kauai, Maui, and Hawaii, shall establish special design parameters and restrictions [{}for{}] decals or graphic representations affixable to special number plates; provided that the decal shall not be larger than three inches wide by three inches high.

(b) For the purposes of this section, the following terms shall have the following meanings:

“Director” unless indicated otherwise by its context, means the county directors of finance.

“Organization” means:

- (1) A not-for-profit organization recognized as such by the Internal Revenue Service and whose primary purpose is to provide the community with specific programs to improve the public’s health, education, or general welfare;
- (2) A military service veterans group; [øø]

## ACT 8

- (3) A state or county agency approved by the director; or
- (4) Any school or accredited institution of higher learning or a college or recognized program thereof.

“Special number plate” means a license plate with a decal on its face that represents an organization as defined in this section.

(c) Organizations as defined under subsection (b) may apply for a special number plate with the director. The organization shall design a decal to be placed on the license plate that represents the organization and complies with this section.

All organizations shall be headquartered in the State; provided that an organization that is a chapter or branch of an international, national, or regional organization shall be in good standing and authorized in writing by the parent organization to use the decal design applied for by the organization.

(d) An organization shall apply for a special number plate with the director on an application form prescribed by the director. The application shall include:

- (1) A design of the organization’s decal;
- (2) A signed notarized statement by an officer or director of the organization that the organization will acquire at least one hundred fifty special number plates; and
- (3) The dollar amount the organization plans to raise from each special number plate.

The director shall determine, based on criteria in this section, and the director’s discretion, whether an organization’s application has been accepted or rejected. The director shall also seek the approval of an organization’s decal design from the county chief of police where the application is made.

If the director rejects an application, the director shall state the reasons for the rejection in writing and shall allow the applicant to reapply within a reasonable period after the rejection.

After an organization’s application has been approved, a motor vehicle owner may apply for the organization’s special number plate. The director may require the completion of a form as prescribed by the director. Special number plates shall be issued only to the registered owner of an applicant motor vehicle.

(e) The design of the decal used on an organization’s special number plate shall not:

- (1) Infringe or otherwise violate any trademark, trade name, service mark, copyright, or other proprietary or property right;
- (2) Represent any obscene or degrading image, idea, word, or phrase;
- (3) Advertise or endorse a product, brand, or service that is provided for sale;
- (4) Promote any religious belief; or
- (5) Promote any philosophy based on prejudice or that is contrary to state civil rights laws;

provided that the decal does not obstruct the visibility of the number or letters or any other information that is required by law to be on the license plate and is readily identifiable and distinguishable under actual traffic conditions.

(f) The director shall charge a special number plate fee equal to the county’s cost of providing the special number plate plus the organization’s fundraising amount applied for under subsection (d). The fee shall be in addition to any other state or county fees collected for a motor vehicle registration or license plate. The fundraising portion of the fee shall be deposited in the name of the organization in a separate county budget account. The director shall determine the most efficient means of reimbursing organizations for their fundraising portion of the fee.

(g) ~~Registration certificates and special number plates issued under this section shall not be transferable to any other person. Prior to the transfer of the ownership of a motor vehicle with special number plates, the registered owner of the~~



~~motor vehicle shall surrender the special number plates to the director as a condition to the issuance of a new motor vehicle registration and license plates.] The director may revoke the approval of an organization's application for special number plates if the total number of registered vehicles that obtained the special number plates is less than one hundred fifty within three years of receiving approval to issue the organization's special number plate. Upon the revocation of the approval, the director shall return the unused decals to the organization.~~

(h) Nothing in this section shall be construed to apply to special number plates issued pursuant to section 249-9.2.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 15, 2005.)

## ACT 9

S.B. NO. 1680

A Bill for an Act Relating to Qualifications of Board Members.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 26-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department of land and natural resources shall be headed by an executive board to be known as the board of land and natural resources, except for matters relating to the state water code where the commission on water resource management shall have exclusive jurisdiction and final authority.

The board shall consist of seven members, one from each land district and three at large. The appointment, tenure, and removal of the members and the filling of vacancies on the board shall be as provided in section 26-34. At least one member of the board shall have a background in conservation and natural resources, as provided in section 171-4.

The governor shall appoint the chairperson of the board from among the members thereof.

The board may delegate to the chairperson such duties, powers, and authority, or so much thereof, as may be lawful or proper for the performance of the functions vested in the board.

The chairperson of the board shall serve in a full-time capacity. The chairperson, in that capacity, shall perform those duties, and exercise those powers and authority, or so much thereof, as may be delegated by the board.”

SECTION 2. Section 171-4, Hawaii Revised Statutes, is amended to read as follows:

“**§171-4 Board of land and natural resources; terms and qualifications of members of the board; organization; expenses.** (a) The board of land and natural resources shall be composed of seven members, one from each land district and three at large, to be nominated and, by and with the advice and consent of the senate, appointed by the governor as provided in section 26-34. The term and removal of a member of the board and the filling of a vacancy on the board shall also be as provided in section 26-34. There shall be not more than three members on the

## ACT 10

board from the same political party. At least one member of the board shall have a background in conservation and natural resources, as evidenced by:

- (1) A college degree in a relevant field, including forestry, wildlife conservation, geology, environmental science, or marine biology; or
- (2) Work history sufficient to demonstrate an appropriate level of knowledge in the subject of land and natural resources, including parks and recreation, public lands management, natural area reserves, aquatic resources, boating and recreation, forestry and wildlife, water resources management, or conservation and resources.

(b) Each member shall disclose and file with the board a list of all transactions with the department of land and natural resources in which the member has a direct interest. The member shall also disclose all transactions with the department involving any corporation, association, partnership, or joint venture in which the member is an officer, partner, or employee. Any member having any interest, direct or indirect, in any matter before the board shall disqualify oneself from voting on or participating in the discussion of the matter.

(c) The governor shall select a chairperson of the board from among its members. The chairperson shall call and preside at meetings and may appoint a member of the board as secretary. The members of the board shall choose one of their number to act as chairperson during the absence or disability of the chairperson.

(d) The members of the board shall serve without pay but shall be entitled to reimbursement for necessary expenses while attending meetings and while in the discharge of their duties.”

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval and shall apply to any new appointments and reappointments made after its effective date.

(Approved April 18, 2005.)

## ACT 10

S.B. NO. 681

A Bill for an Act Relating to the Definition of Sexual Conduct.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 712-1210, Hawaii Revised Statutes, is amended by amending the definition of “sexual conduct” to read as follows:

“~~“Sexual conduct” has the same meaning as in section 712-1200(2).]~~

“Sexual conduct” means acts of masturbation, homosexuality, lesbianism, bestiality, sexual intercourse or physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or the breast or breasts of a female for the purpose of sexual stimulation, gratification, or perversion.”

SECTION 3. Statutory material to be repealed is bracketed and stricken.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 18, 2005.)

## ACT 11

S.B. NO. 1230

A Bill for an Act Relating to Dental Insurance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 132, Session Laws of Hawaii 2001, as amended by Act 219, Session Laws of Hawaii 2002, Act 128, Session Laws of Hawaii 2003, and Act 30, Session Laws of Hawaii 2004, is amended by amending section 4 to read as follows:

“SECTION 4. This Act shall take effect upon its approval and shall be repealed on July 1, [~~2005.~~] 2006.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on June 30, 2005.

(Approved April 18, 2005.)

## ACT 12

S.B. NO. 615

A Bill for an Act Relating to Small Claims Court.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 633-27, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All district courts, except as otherwise provided, shall exercise jurisdiction conferred by this chapter, and while sitting in the exercise of that jurisdiction, shall be known and referred to as the small claims division of the district court; provided that the jurisdiction of the court when sitting as a small claims division of the district court shall be confined to:

- (1) Cases for the recovery of money only where the amount claimed does not exceed \$3,500 exclusive of interest and costs, except as provided by section 633-30;
- (2) Cases involving disagreement between landlord and tenant about the security deposit in a residential landlord-tenant relationship; and
- (3) Cases for the return of leased or rented personal property worth \$3,500 or less where the amount claimed owed for that lease or rental does not exceed \$3,500 exclusive of interest and costs.

This chapter shall not abridge or affect the jurisdiction of the district courts under paragraphs (1) and (3) to determine cases under the ordinary procedures of the court, it being optional with the plaintiff in the cases to elect the procedure of the small claims division of the district court or the ordinary procedures, as provided by rule of court. No case filed in the small claims division after December 31, 1991, shall be removed from the small claims division to be heard under the ordinary procedures of the district court unless the removal is agreed to by the plaintiff. In cases arising under paragraph (2) the jurisdiction of the small claims division of the district court shall be exclusive[-]; provided that the district court, having jurisdiction over a civil action involving summary possession, shall have concurrent jurisdiction with the small claims division of the district court over any security deposit dispute between

## ACT 13

landlord and tenant in a residential landlord-tenant relationship. This subsection shall not abrogate nor supersede sections 604-5, 633-30, and 633-31.”

SECTION 2. Section 633-28, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Notwithstanding any provision of law requiring the licensing of practitioners, any person [~~may~~], with the approval of the court, may appear on behalf of [oneself] the person or another person in the small claims division of the district court; provided that, in cases in the small claims division of the district court involving disagreement between landlord and tenant about the security deposit in a residential landlord-tenant relationship, licensed practitioners are prohibited [to appear] from appearing on behalf of another person. The services of an unlicensed person appearing under this subsection shall be without compensation, either by way of direct fee, contingent fee, or otherwise. In the event [~~the~~] representation services are rendered for compensation, this subsection is inapplicable and the rendering of the services constitutes the unlawful practice of law, except as otherwise provided.”

SECTION 3. Section 633-30, Hawaii Revised Statutes, is amended to read as follows:

“**§633-30 Counterclaim; retention of jurisdiction.** When the limit of the district court as provided by section 633-27 is exceeded in a counterclaim but within the jurisdictional limit of the court as provided by section 604-5, the action shall nevertheless remain in the small claims division of the district court and be tried therein in its entirety[.]; provided that the district court having jurisdiction over a civil action involving summary possession shall have concurrent jurisdiction with the small claims division of the district court over any security deposit dispute between landlord and tenant in a residential landlord-tenant relationship.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on January 1, 2006.

(Approved April 18, 2005.)

## ACT 13

H.B. NO. 119

A Bill for an Act Relating to Elections.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 12-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No candidate’s name shall be printed upon any official ballot to be used at any primary, special primary, or special election unless a nomination paper was filed in the candidate’s behalf and in the name by which the candidate is commonly known. The nomination paper shall be in a form prescribed and provided by the chief election officer containing substantially the following information:

- (1) A statement by the registered voters signing the form that they are eligible to vote for the candidate;

- (2) A statement by the registered voters signing the form that they nominate the candidate for the office identified on the nomination paper issued to the candidate;
- (3) The residence address and county in which the candidate resides;
- (4) The legal name of the candidate, the name by which the candidate is commonly known, if different, the office for which the candidate is running, and the candidate's party affiliation or nonpartisanship; all of which are to be placed on the nomination paper by the chief election officer or the clerk prior to releasing the form to the candidate;
- (5) Space for the name, signature, date of birth, last four digits of the social security number, and residence address of each registered voter signing the form, and other information as determined by the chief election officer; provided that no more than the last four digits of a voter's social security number shall be required;
- (6) A sworn certification by self-subscribing oath by the candidate that the candidate qualifies under the law for the office the candidate is seeking and that the candidate has determined that, except for the information provided by the registered voters signing the nomination papers, all of the information on the nomination papers is true and correct;
- (7) A sworn certification by self-subscribing oath by a party candidate that the candidate is a member of the party;
- (8) A sworn certification by self-subscribing oath, where applicable, by the candidate that the candidate has complied with the provisions of article II, section 7, of the Constitution of the State of Hawaii;
- (9) A sworn certification by self-subscribing oath by the candidate that the candidate is in compliance with section 831-2, dealing with felons, and is eligible to run for office; and
- (10) The name the candidate wishes printed on the ballot and the mailing address of the candidate."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 19, 2005.)

## ACT 14

H.B. NO. 894

A Bill for an Act Relating to Elections.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that certain features of Hawaii's election law are not only archaic, but also no longer serve any legitimate purpose. The requirement that the precinct chair of a polling place be of the same political party as the governor is one such example. This requirement is flawed for two reasons. First, it creates the appearance of a conflict of interest by permitting the political party in power to control and manage Hawaii's elections at the ballot box. Moreover, the perception of unfairness that arises from this requirement taints the process even if there is no actual impropriety.

Second, from a practical standpoint, it has proven difficult to satisfy this requirement. Often, the office of elections needlessly expends time and resources in trying to meet this requirement, but in the end, the chief election officer often resorts

## ACT 14

to using individuals who do not satisfy this requirement. Nonetheless, these individuals conduct themselves with the highest integrity and impartiality in carrying out the duties of a precinct chair, thus further undermining the basis for the current law.

The purpose of this Act is to remove the requirement that the precinct chair of a polling place be of the same political party as the governor.

SECTION 2. Section 11-72, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In assigning the precinct officials the following criteria shall be followed:

- (1) The precinct officials shall be registered voters of the precinct in which they serve; but if qualified persons in the precinct or representative district are not readily available to serve, they may be chosen from without the precinct or representative district, or if qualified persons either in or without the precinct or representative district are not available to serve, the chief election officer may designate precinct officials who are not registered voters if the persons so designated are otherwise qualified and shall have attained the age of sixteen years on or before June 30, of the year of the election in which they are appointed to work.
- (2) The chief election officer may designate more precinct officials than are needed in order to create a pool of qualified precinct officials who may be assigned to fill vacancies or to perform such duties as needed in any precinct.
- (3) No parent, spouse, child, or sibling of a candidate shall be eligible to serve as a precinct official in any precinct in which votes may be cast for the candidate; nor shall any candidate for any elective office be eligible to serve as a precinct official in the same election in which the person is a candidate. No candidate who failed to be nominated in the primary or special primary election shall be eligible to serve as a precinct official in the general election next following.
- (4) The chairperson of the precinct officials shall be ~~[of the same party as the governor and shall be]~~ the first named precinct official on the list prepared by the chief election officer. The remainder of the precinct officials shall be apportioned as follows:
  - (A) The total votes cast, except those cast for nonpartisan candidates, for all of the following offices which were on the ballot in the next preceding general election shall be divided into the total votes cast for all the candidates of each party for such offices: president and vice-president, United States senator, United States representative, governor and lieutenant governor, state senator, and state representative.
  - (B) In the event that a party's proportion of votes cast exceeds fifty per cent, its share shall be one-half of the precinct officials. The remaining one-half shall be divided among the remaining parties in proportion to their respective total of votes cast for the offices set forth in subparagraph (A).
  - (C) In the case of the above division resulting in parties having fractional positions a whole position shall go to the party with the larger number of votes cast.
  - (D) Newly qualified parties may be assigned up to ten per cent of the total positions available at the discretion of the chief election officer.”

SECTION 3. Statutory material to be repealed is bracketed and stricken.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 19, 2005.)

ACT 15

S.B. NO. 789

A Bill for an Act Making an Emergency Appropriation for Home and Community Based Services.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with article VII, section 9, of the Constitution of the State of Hawaii.

PART I.

SECTION 2. A critical funding emergency exists. The department of health's program to provide home and community-based services for the developmentally disabled or mentally retarded, also known as the title XIX waiver program, will expend all appropriated funds before the end of the current fiscal year, and the department needs additional funds to meet its fiscal obligations to support its developmentally disabled or mentally retarded clients with services as required by chapter 333F, Hawaii Revised Statutes. The additional funds are necessary to admit individuals into the program to continue to fulfill the settlement agreement in *Makin v. State of Hawaii*, U.S. Dist. Ct., Civil No. 98-00997 DAE by providing funding for support services for developmentally disabled or mentally retarded individuals to live in their communities as an alternative to institutionalization.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$6,990,593 or so much thereof as may be necessary for fiscal year 2004-2005 to carry out the purposes of this Act.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

PART II.

SECTION 4. Act 200, Session Laws of Hawaii 2003, section 3, item F25, as amended by Act 41, Session Laws of Hawaii 2004, section 3, item F34, is amended to read as follows:

“34. HMS603 – HOME AND COMMUNITY BASED CARE SERVICES

|           |     |             |                                       |
|-----------|-----|-------------|---------------------------------------|
| Operating | HMS | 13,027,039A | 13,877,039A                           |
|           | HMS | 51,505,685N | 54,146,633N                           |
|           | HMS | 21,798,316U | [23,793,802U]<br><u>33,059,395U</u> ” |

The sum appropriated shall be expended by the department of human services for the purposes of this Act.

# ACT 16

SECTION 5.<sup>1</sup> This Act shall take effect upon its approval.

(Approved April 19, 2005.)

## Note

1. No ramseyer clause.

# ACT 16

S.B. NO. 780

A Bill for an Act Relating to the Hawaiian Homes Commission Act, 1920, as Amended.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 209 of the Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (a) to read as follows:

“(a) Upon the death of the lessee, the lessee’s interest in the tract or tracts and the improvements thereon, including growing crops and aquacultural stock (either on the tract or in any collective contract or program to which the lessee is a party by virtue of the lessee’s interest in the tract or tracts), shall vest in the relatives of the decedent as provided in this paragraph. From the following relatives of the lessee who are (1) at least one-quarter Hawaiian, husband, wife, children, [or] grandchildren, brothers, or sisters, or (2) native Hawaiian, father and mother, widows or widowers of the children, [~~brothers and sisters.~~] widows or widowers of the brothers and sisters, or nieces and nephews, — the lessee shall designate the person or persons to whom the lessee directs the lessee’s interest in the tract or tracts to vest upon the lessee’s death. The Hawaiian blood requirements shall not apply to the descendants of those who are not native Hawaiians but who were entitled to the leased lands under section 3 of the Act of May 16, 1934 (48 Stat. 777, 779), as amended, or under section 3 of the Act of July 9, 1952 (66 Stat. 511, 513). In all cases that person or persons need not be eighteen years of age. The designation shall be in writing, may be specified at the time of execution of the lease with a right in the lessee in similar manner to change the beneficiary at any time and shall be filed with the department and approved by the department in order to be effective to vest the interests in the successor or successors so named.

In case of the death of any lessee, except as hereinabove provided, who has failed to specify a successor or successors as approved by the department, the department may select from only the following qualified relatives of the decedent:

- (1) Husband or wife; or
- (2) If there is no husband or wife, then the children; or
- (3) If there is no husband, wife, or child, then the grandchildren; or
- (4) If there is no husband, wife, child, or grandchild, then brothers or sisters; or
- (5) If there is no husband, wife, child, grandchild, brother, or sister, then from the following relatives of the lessee who are native Hawaiian: father and mother, widows or widowers of the children, [~~brothers and sisters.~~] widows or widowers of the brothers and sisters, or nieces and nephews.

The rights to the use and occupancy of the tract or tracts may be made effective as of the date of the death of the lessee.

In the case of the death of a lessee leaving no designated successor or successors, husband, wife, children, grandchildren, or relative qualified to be a lessee of Hawaiian home lands, the land subject to the lease shall resume its status as



unleased Hawaiian home lands and the department is authorized to lease the land to a native Hawaiian as provided in this Act.

Upon the death of a lessee who has not designated a successor and who leaves a spouse not qualified to succeed to the lease or children not qualified to succeed to the lease, or upon the death of a lessee leaving no relative qualified to be a lessee of Hawaiian home lands, or the cancellation of a lease by the department, or the surrender of a lease by the lessee, the department shall appraise the value of all the improvements and growing crops or improvements and aquacultural stock, as the case may be, and shall pay to the nonqualified spouse or the nonqualified children as the lessee shall have designated prior to the lessee's death, or to the legal representative of the deceased lessee, or to the previous lessee, as the case may be, the value thereof, less any indebtedness to the department, or for taxes, or for any other indebtedness the payment of which has been assured by the department, owed by the deceased lessee or the previous lessee. These payments shall be made out of the Hawaiian home loan fund and shall be considered an advance therefrom and shall be repaid by the successor or successors to the tract involved. If available cash in the Hawaiian home loan fund is insufficient to make these payments, payments may be advanced from the Hawaiian home general loan fund and shall be repaid by the successor or successors to the tract involved; provided that any repayment for advances made from the Hawaiian home general loan fund shall be at the interest rate established by the department for loans made from the Hawaiian home general loan fund. The successor or successors may be required by the commission to obtain private financing in accordance with section 208(6) to pay off the amount advanced from the Hawaiian home loan fund or Hawaiian home general loan fund."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 20, 2005.)

## ACT 17

H.B. NO. 313

A Bill for an Act Relating to 911 Emergency Service.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 710, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§710- Misuse of 911 emergency telephone service.** (1) A person commits the offense of misuse of 911 emergency telephone service if the person accesses the telephone number 911 and:

- (a) Knowingly causes a false alarm; or
- (b) Makes a false complaint or a report of false information in reckless disregard of the risk that a public safety agency will respond by dispatching emergency services.

(2) Misuse of 911 emergency telephone service is a misdemeanor.

(3) For purposes of this section, “public safety agency” means any federal, state, or county police, fire, emergency medical service, or civil defense relief agency.”

## ACT 18

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved April 20, 2005.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 18

H.B. NO. 496

A Bill for an Act Relating to Petty Misdemeanors.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 701-107, Hawaii Revised Statutes, is amended by amending subsection (4) to read as follows:

“(4) A crime is a petty misdemeanor if it is so designated in this Code or in a statute other than this Code enacted subsequent thereto, or if it is defined by a statute other than this Code [~~which~~] that provides that persons convicted thereof may be sentenced to imprisonment for a term [~~of which the maximum is less than one year.]~~ not to exceed thirty days.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 20, 2005.)

## ACT 19

S.B. NO. 1249

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii school-to-work executive council has reported that the last expenditure of federal funds allocated to Hawaii by the School-to-Work Opportunities Act of 1994, Public Law 103-239, was in September 2003. Federal funding for Hawaii school-to-work ended in 2000. The final closeout report on the accomplishments of Hawaii school-to-work has been sent to the federal government. The program’s key initiatives are now established with other public and private entities, including the department of education, the workforce development council, and the Hawaii P-20 initiative.

The purpose of this Act is to repeal the Hawaii school-to-work executive council.

SECTION 2. Chapter 302A, part II, subpart E, Hawaii Revised Statutes, is repealed.

SECTION 3. This Act shall take effect on July 1, 2005.

(Approved April 20, 2005.)

## ACT 20

S.B. NO. 1210

A Bill for an Act Relating to Family Child Care.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 242, Session Laws of Hawaii 1999, as amended by section 3 of Act 225, Session Laws of Hawaii 2001, is amended by amending section 8 to read as follows:

- “SECTION 8. This Act shall take effect upon its approval; provided that[  
 (1) ~~Sections~~] sections 1 and 2 shall apply to child care businesses, family child care homes, condominium projects, planned communities, and townhouses that are in existence as of the effective date of this Act[  
 and  
 (2) ~~This Act shall be repealed on June 30, 2005; provided that sections 46-15.35, 346-151, 501-231, and 502-111, Hawaii Revised Statutes, shall be reenacted in the same form in which they existed on the day before the approval of this Act].”~~

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on June 29, 2005.

(Approved April 20, 2005.)

## ACT 21

H.B. NO. 8

A Bill for an Act Relating to Military Service.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The terrorist attacks of September 11, 2001, continue to have repercussions today. Thousands of military service members have been deployed to dangerous, volatile, and unstable areas of the world, including Iraq and Afghanistan.

The purpose of this Act is to provide for a Hawaii medal of honor that would help express the deep appreciation and gratitude of the people of Hawaii to the loved ones of members of the military who sacrificed their lives in defense of our nation and its freedoms.

As of February 14, 2005, the following eighty-three servicemembers with Hawaii ties made the ultimate sacrifice for our nation and its freedoms since combat operations begin in Afghanistan and Iraq:

1. *Army Private First Class John D. Amos II*, 22, assigned to the 25th Infantry Division (Schofield Barracks), KIA April 4, 2004.
2. *Marine Corps Staff Sergeant Brian D. Bland*, 26, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA on January 26, 2005.

3. *Marine Corps Lance Corporal Jeffrey S. Blanton*, 23, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA Dec. 12, 2004.
4. *Army Sergeant 1st Class Kelly Bolor*, 37, of Lahina Maui, KIA Nov. 13, 2003.
5. *Marine Corps Lance Corporal Jeremy D. Bow*, 20, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA Oct. 30, 2004.
6. *Marine Corps Lance Corporal David M. Branning*, 21, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA Nov. 12, 2004.
7. *Army Chief Warrant Officer William I. Brennan*, 36, assigned to the 25th Aviation Regiment (Schofield Barracks), KIA Oct. 16, 2004.
8. *Marine Corps Lance Corporal John T. Byrd II*, 23, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA Oct. 30, 2004.
9. *Army Private First Class Stephen A. Castellano*, 21, assigned to the 114th Infantry Regiment (Schofield Barracks), KIA Jan. 28, 2005.
10. *Marine Corps Corporal Michael R. Cohen*, 23, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA Nov. 22, 2004.
11. *Marine Corps Sergeant Kelley L. Courtney*, 28, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA Oct. 30, 2004.
12. *Army Specialist Isaac E. Diaz*, 26, assigned to the 27th Infantry Regiment (Schofield Barracks), KIA Dec. 1, 2004.
13. *Marine Corps Lance Corporal Michael A. Downey*, 21, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA Nov. 19, 2004.
14. *Marine Corps Lance Corporal Jonathan E. Etterling*, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA on January 26, 2005.
15. *Army Specialist Kyle K. Fernandez*, 26, from Pearl City, KIA Oct. 14, 2004.
16. *Marine Corps Sergeant Michael Finke Jr.*, 28, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA on January 26, 2005.
17. *Army Corporal Jacob R. Fleischer*, 25, assigned to the 5<sup>th</sup> Infantry Regiment (Schofield Barracks), KIA Nov. 24, 2004.
18. *Army Staff Sgt. Oscar D. Vargas-Medina*, 32, assigned to the 84th Engineer Battalion (Schofield Barracks), KIA May 1, 2004.
19. *Army Private First Class Jose Ricardo Flores-Mejia*, 21, assigned to the 45<sup>th</sup> Corps Support Group (Schofield Barracks), KIA Nov. 16, 2004.
20. *Marine Corps Lance Corporal Travis A. Fox*, 25, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA October 30, 2004.
21. *Army Corporal Dale E. Fracker Jr.*, 23, assigned to the 5<sup>th</sup> Infantry Regiment (Schofield Barracks), KIA November 24, 2004.
22. *Army Corporal David M. Fraise*, 24, assigned to the 35<sup>th</sup> Infantry Regiment (Schofield Barracks), KIA June 7, 2004.
23. *Marine Corps 1st Lieutenant Travis J. Fuller*, 26, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA on January 26, 2005.
24. *Army Sergeant Daniel Lee Galvan*, 30, assigned to the 25th Aviation Regiment (Schofield Barracks), KIA August 12, 2004.
25. *Marine Corps Corporal Timothy "Timmy" Gibson*, 23, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA on January 26, 2005.
26. *Marine Corps Corporal Richard Gilbert Jr.*, 28, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA on January 26, 2005.
27. *Army Corporal Billy Gomez*, 25, assigned to the 27<sup>th</sup> Infantry Regiment (Schofield Barracks), KIA October 27, 2004.
28. *Marine Corps Kyle J. Grimes*, 21, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA on January 26, 2005.

29. *Army Chief Warrant 2 Travis Grogan*, 31, assigned to the 4<sup>th</sup> Cavalry Regiment (Schofield Barracks), KIA November 27, 2004.
30. *Marine Corps Lance Corporal Tony Hernandez*, 22, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA on January 26, 2005.
31. *Army Specialist Joseph F. Herndon II*, 21, assigned to the 27<sup>th</sup> Infantry Regiment (Schofield Barracks), KIA July 29, 2004.
32. *Army Staff Sergeant Brian S. Hobbs*, 31, assigned to the 5<sup>th</sup> Infantry Regiment (Schofield Barracks), KIA October 14, 2004.
33. *Army First Lieutenant Nainoa K. Hoe*, 27, 1995 Kamehameha Schools graduate, KIA Jan. 22, 2005.
34. *Marine Corps Lance Corporal Brian C. Hopper*, 21, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA on January 26, 2005.
35. *Navy Petty Officer 3rd Class John D. House*, 28, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA on January 26, 2005.
36. *Marine Corps Lance Corporal Saeed Jafarkhani-Torshizi Jr.*, 25, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA on January 26, 2005.
37. *Army Captain Christopher B. Johnson*, 29, assigned to the 25th Aviation Regiment (Schofield Barracks), KIA October 16, 2004.
38. *Marine Corps Corporal Stephen P. Johnson*, 24, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA January 26, 2005.
39. *Marine Corps Corporal Sean Kelly*, 23, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA on January 26, 2005.
40. *Army Private First Class Jeungjin "Nikky" Kim*, 23, former Honolulu resident, KIA October 6, 2004.
41. *Marine Corps Lance Corporal Allan Klein*, 34, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA on January 26, 2005.
42. *Marine Corps Tim Knight*, 22, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA on January 26, 2005.
43. *Marine Corps Corporal Christopher J. Lapka*, 22, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA October 30, 2004.
44. *Marine Corps Private First Class John Lukac*, 19, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA October 30, 2004.
45. *Marine Corps Lance Corporal Fred L. Maciel*, 20, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA on January 26, 2005.
46. *Marine Corps Lance Corporal Blake A. Magaoay*, 20, Pearl City High School graduate, KIA November 29, 2004.
47. *Army Specialist David P. Mahlenbrock*, 20, assigned to the 65<sup>th</sup> Engineer Battalion, KIA December 3, 2004.
48. *Army Chief Warrant Officer Ian D. Manuel*, 23, born in Honolulu, KIA Jan. 8, 2004.
49. *Army Specialist James McConnell*, 27, assigned to the 27<sup>th</sup> Infantry Regiment (Schofield Barracks), KIA November 16, 2004.
50. *Army Lieutenant Col. Michael McMahon*, 41, assigned to the 4<sup>th</sup> Cavalry Regiment (Schofield Barracks), KIA November 27, 2004.
51. *Marine Corps Lance Corporal Brian A. Medina*, 20, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA November 12, 2004.
52. *Army Staff Sergeant Oscar D. Medina*, 32, assigned to the 84<sup>th</sup> Engineer Battalion, KIA May 1, 2004.
53. *Army Specialist Harley Miller*, 21, assigned to the 4<sup>th</sup> Cavalry Regiment (Schofield Barracks), KIA November 27, 2004.
54. *Marine Corps Corporal James Lee Moore*, 24, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA on January 26, 2005.

55. *Marine Corps Corporal Nathan Moore*, 21, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA on January 26, 2005.
56. *Army Staff Sergeant Todd Nunes*, 29, assigned to the 21<sup>st</sup> Infantry Regiment, KIA May 2, 2004.
57. *Army Specialist Ramon C. Ojeda*, 22, assigned to the 84<sup>th</sup> Engineer Battalion (Schofield Barracks), KIA May 1, 2004.
58. *Marine Corps Sergeant Rafael Peralta*, 25, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA November 14, 2004.
59. *Marine Corps Lance Corporal Aaron C. Pickering*, 20, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA on November 10, 2004.
60. *Marine Corps Lance Corporal Mourad Ragimov*, 20, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA on January 26, 2005.
61. *Marine Corps Lance Corporal Rhonald "Dain" Rairdan*, 20, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA on January 26, 2005.
62. *Marine Corps Lance Corporal Hector Ramos*, 20, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA on January 26, 2005.
63. *Marine Corps Lance Corporal Andrew G. Riedel*, 19, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA October 30, 2004.
64. *Marine Corps Lance Corporal Gael Saintvil*, 24, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA on January 26, 2005.
65. *Army Staff Sergeant Cameron B. Sarno*, 43, former Waipahu resident, KIA September, 1, 2003.
66. *Marine Corps Lance Corporal Michael P. Scarborough*, 28, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA October 30, 2004.
67. *Marine Corps Corporal Nathan Schubert*, 23, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA on January 26, 2005.
68. *Marine Corps Lance Corporal Darrell J. Schumann*, 25, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA on January 26, 2005.
69. *Marine Corps 1st Lieutenant Dustin Shumney*, 30, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA on January 26, 2005.
70. *Marine Corps Corporal Matthew Smith*, 24, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA on January 26, 2005.
71. *Marine Corps Lance Corporal Richard P. Slocum*, 19, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA October 24, 2004.
72. *Marine Corps Lance Corporal Joseph Spence*, 23, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA on January 26, 2005.
73. *Marine Corps Lance Corporal Michael L. Starr Jr.*, 21, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA on January 26, 2005.
74. *Army Private First Class Ernest H. Sutphin*, 21, assigned to the 11<sup>th</sup> Field Infantry Regiment (Schofield Barracks), KIA March 18, 2004.
75. *Army Chief Warrant Officer Sharon T. Swartworth*, 43, former Hawaii resident, KIA November 7, 2003.
76. *Marine Corps Lance Corporal Franklin A. Sweger*, 24, assigned to the 3<sup>rd</sup> Marine Regiment (Kaneohe Bay), KIA December 16, 2004.
77. *Army Specialist Joseph C. Thibodeaux III*, 24, assigned to the 2<sup>nd</sup> Brigade Combat Team (Schofield Barracks), KIA September 1, 2004.
78. *Army Private First Class Joshua Kuile Paul Titcomb*, 20, former Waianae resident, KIA September 29, 2004.
79. *Army Specialist Wesley Wells*, 21, assigned to the 27<sup>th</sup> Infantry Regiment (Schofield Barracks), KIA September 20, 2004.
80. *Army Sergeant Eugene Williams*, 24, family from Oahu, KIA March 29, 2003.
81. *Army Specialist Philip Witkowski*, 24, assigned to the 7<sup>th</sup> Field Artillery (Schofield Barracks), KIA May 1, 2004.

82. *Army 2nd Lieutenant Jeremy Wolfe, 27, graduated from Hawaii Pacific University, KIA November 15, 2003.*
83. *Navy Petty Officer Julian Woods, 22, assigned to the 3<sup>rd</sup> Marine Division Detachment (Kaneohe Bay), KIA November 10, 2004.*

SECTION 2. Chapter 121, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§121- Hawaii medal of honor.** (a) The Hawaii medal of honor may be awarded on behalf of the people of the State of Hawaii to an individual who has been killed in action, while:

- (1) Engaged in an action against an enemy of the United States;
- (2) Engaged in military operations involving conflict with an opposing foreign force;
- (3) Serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party; or
- (4) Serving in a combat zone as designated by presidential order.

(b) A recipient of the Hawaii medal of honor may have the recipient’s name entered on the Hawaii medal of honor roll.

(c) Individuals eligible to receive the Hawaii medal of honor include:

- (1) Members of the Hawaii national guard who were legal residents of Hawaii at the time they were killed in action;
- (2) Members of the United States military reserves who were legal residents of Hawaii at the time they were killed in action;
- (3) Members of the regular United States armed forces who were:
  - (A) Legal residents of Hawaii at the time they were killed in action; or
  - (B) Stationed in Hawaii by a proper order of the United States Department of Defense at the time they were killed in action; and
- (4) Members of the Hawaii national guard, United States military reserves, or regular United States armed forces who:
  - (A) Attended a public or private educational institution in Hawaii at some period during their lives; and
  - (B) Were killed in action.

(d) The Hawaii medal of honor shall be awarded solely by a concurrent resolution:

- (1) Introduced by:
  - (A) The president of the senate;
  - (B) The speaker of the house of representatives; or
  - (C) The duly authorized representative of the president of the senate or the speaker of the house of representatives; and
- (2) Adopted by both houses of the legislature.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved April 20, 2005.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Statutory Revision: Amending, Reenacting, or Repealing Various Provisions of the Hawaii Revised Statutes and the Session Laws of Hawaii for the Purpose of Correcting Errors and References, Clarifying Language, and Deleting Obsolete or Unnecessary Provisions.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 26-6, Hawaii Revised Statutes, is amended to read as follows:

**“§26-6 Department of accounting and general services.** (a) The department of accounting and general services shall be headed by a single executive to be known as the comptroller.

(b) The department shall:

- (1) Preadmit and conduct after-the-fact audits of the financial accounts of all state departments to determine the legality of expenditures and the accuracy of accounts;
- (2) Report to the governor and to each regular session of the legislature as to the finances of each department of the State;
- (3) Administer the state risk management program;
- (4) Establish and manage motor pools;
- (5) Manage the preservation and disposal of all records of the State;
- (6) Undertake the program of centralized engineering and office leasing services, including operation and maintenance of public buildings, for departments of the State;
- (7) Undertake the functions of the state surveyor;
- (8) Establish accounting and internal control systems;
- (9) Provide centralized computer information management and processing services, coordination in the use of all information processing equipment, software, facilities, and services in the executive branch of the State, and consultation and support services in the use of information processing and management technologies to improve the efficiency, effectiveness, and productivity of state government programs; and
- (10) Establish, coordinate, and manage a program to provide a means for public access to public information and develop and operate an information network in conjunction with its overall plans for establishing a communication backbone for state government.

(c) The state communication system shall be established to:

- (1) Facilitate implementation of the State’s distributed information processing and information resource management plans;
- (2) Improve data, voice, and video communications in state government;
- (3) Provide a means for connectivity among the state, university, and county computer systems; and
- (4) Provide a long-term means for public access to public information.

(e) (d) The department may adopt rules as may be necessary or desirable for the operation and maintenance of public buildings, and for the operation and implementation of a program to provide a means for public access to the State’s information network system and public information. The rules shall be adopted pursuant to chapter 91.

(e) (d) The King Kamehameha celebration commission shall be placed within the department of accounting and general services for administrative purposes. The functions, duties, and powers, subject to the administrative control of the



comptroller, and the composition of the commission shall be as heretofore provided by law.

[(e)] (f) The functions and authority heretofore exercised by the comptroller, board of commissioners of public archives, the archivist, the disposal committee, and the insurance management, surplus property management, and central purchasing functions of the bureau of the budget and the nonhighway functions of the department of public works as heretofore constituted are transferred to the department of accounting and general services established by this chapter.”

SECTION 2. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (o) to read as follows:

“(o) Every person licensed under any chapter within the jurisdiction of the department of commerce and consumer affairs and every person licensed subject to chapter 485 [~~or registered under chapter 467B~~] shall pay upon issuance of a license, permit, certificate, or registration a fee and a subsequent annual fee to be determined by the director and adjusted from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this section, do not surpass the annual operating costs of conducting compliance resolution activities required under this section. The fees may be collected biennially or pursuant to rules adopted under chapter 91, and shall be deposited into the special fund established under this subsection. Every filing pursuant to chapter 514E or section 485-6(15) shall be assessed, upon initial filing and at each renewal period in which a renewal is required, a fee that shall be prescribed by rules adopted under chapter 91, and that shall be deposited into the special fund established under this subsection. Any unpaid fee shall be paid by the licensed person, upon application for renewal, restoration, reactivation, or reinstatement of a license, and by the person responsible for the renewal, restoration, reactivation, or reinstatement of a license, upon the application for renewal, restoration, reactivation, or reinstatement of the license. If the fees are not paid, the director may deny renewal, restoration, reactivation, or reinstatement of the license. The director may establish, increase, decrease, or repeal the fees when necessary pursuant to rules adopted under chapter 91. The director may also increase or decrease the fees pursuant to section 92-28.

There is created in the state treasury a special fund to be known as the compliance resolution fund to be expended by the director’s designated representatives as provided by this subsection. Notwithstanding any law to the contrary, all revenues, fees, and fines collected by the department shall be deposited into the compliance resolution fund. Unencumbered balances existing on June 30, 1999, in the cable television fund under chapter 440G, the division of consumer advocacy fund under chapter 269, the financial institution examiners’ revolving fund, section 412:2-109, the special handling fund, section 414-13, and unencumbered balances existing on June 30, 2002, in the insurance regulation fund, section 431:2-215, shall be deposited into the compliance resolution fund. This provision shall not apply to the drivers education fund underwriters fee, section 431:10C-115, insurance premium taxes and revenues, revenues of the workers’ compensation special compensation fund, section 386-151, the captive insurance administrative fund, section 431:19-101.8, the insurance commissioner’s education and training fund, section 431:2-214, the medical malpractice patients’ compensation fund as administered under section 5 of Act 232, Session Laws of Hawaii 1984, and fees collected for deposit in the office of consumer protection restitution fund, section 487-14, the real estate appraisers fund, section 466K-1, the real estate recovery fund, section 467-16, the real estate education fund, section 467-19, the contractors recovery fund, section 444-26, the contractors education fund, section 444-29, and the condominium management education fund, section 514A-131. Any law to the contrary notwithstanding, the director may use the moneys in the fund to employ, without regard to

chapter 76, hearings officers, investigators, attorneys, accountants, and other necessary personnel to implement this subsection. Any law to the contrary notwithstanding, the moneys in the fund shall be used to fund the operations of the department. The moneys in the fund may be used to train personnel as the director deems necessary and for any other activity related to compliance resolution.

As used in this subsection, unless otherwise required by the context, “compliance resolution” means a determination of whether:

- (1) Any licensee or applicant under any chapter subject to the jurisdiction of the department of commerce and consumer affairs has complied with that chapter;
  - (2) Any person subject to chapter 485 has complied with that chapter;
  - (3) Any person submitting any filing required by chapter 514E or section 485-6(15) has complied with chapter 514E or section 485-6(15); or
  - (4) Any person has complied with the prohibitions against unfair and deceptive acts or practices in trade or commerce; ~~or~~
  - (5) ~~Any person subject to chapter 467B has complied with that chapter;~~
- and includes work involved in or supporting the above functions, licensing, or registration of individuals or companies regulated by the department, consumer protection, and other activities of the department.

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. The report shall describe expenditures made from the fund including non-payroll operating expenses.”

SECTION 3. Section 76-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The civil service to which this chapter applies shall comprise all positions in the State now existing or hereafter established and embrace all personal services performed for the State, except the following:

- (1) Commissioned and enlisted personnel of the Hawaii national guard as such, and positions in the Hawaii national guard that are required by state or federal laws or regulations or orders of the national guard to be filled from those commissioned or enlisted personnel;
- (2) Positions filled by persons employed by contract where the director of human resources development has certified that the service is special or unique or is essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year;
- (3) Positions that must be filled without delay to comply with a court order or decree if the director determines that recruitment through normal recruitment civil service procedures would result in delay or noncompliance, such as the Felix-Cayetano consent decree;
- (4) Positions filled by the legislature or by either house or any committee thereof;
- (5) Employees in the office of the governor and office of the lieutenant governor, and household employees at Washington Place;
- (6) Positions filled by popular vote;
- (7) Department heads, officers, and members of any board, commission, or other state agency whose appointments are made by the governor or are required by law to be confirmed by the senate;
- (8) Judges, referees, receivers, masters, jurors, notaries public, land court examiners, court commissioners, and attorneys appointed by a state court for a special temporary service;

- (9) One bailiff for the chief justice of the supreme court who shall have the powers and duties of a court officer and bailiff under section 606-14; one secretary or clerk for each justice of the supreme court, each judge of the intermediate appellate court, and each judge of the circuit court; one secretary for the judicial council; one deputy administrative director of the courts; three law clerks for the chief justice of the supreme court, two law clerks for each associate justice of the supreme court and each judge of the intermediate appellate court, one law clerk for each judge of the circuit court, two additional law clerks for the civil administrative judge of the circuit court of the first circuit, two additional law clerks for the criminal administrative judge of the circuit court of the first circuit, one additional law clerk for the senior judge of the family court of the first circuit, two additional law clerks for the civil motions judge of the circuit court of the first circuit, two additional law clerks for the criminal motions judge of the circuit court of the first circuit, and two law clerks for the administrative judge of the district court of the first circuit; and one private secretary for the administrative director of the courts, the deputy administrative director of the courts, each department head, each deputy or first assistant, and each additional deputy, or assistant deputy, or assistant defined in paragraph (16);
- (10) First deputy and deputy attorneys general, the administrative services manager of the department of the attorney general, one secretary for the administrative services manager, an administrator and any support staff for the criminal and juvenile justice resources coordination functions, and law clerks;
- (11) (A) Teachers, principals, vice-principals, complex area superintendents, deputy and assistant superintendents, other certificated personnel, not more than twenty noncertificated administrative, professional, and technical personnel not engaged in instructional work;
- (B) Effective July 1, 2003, teaching assistants, educational assistants, bilingual/bicultural school-home assistants, school psychologists, psychological examiners, speech pathologists, athletic health care trainers, alternative school work study assistants, alternative school educational/supportive services specialists, alternative school project coordinators, and communications aides in the department of education;
- (C) The special assistant to the state librarian and one secretary for the special assistant to the state librarian; and
- (D) Members of the faculty of the University of Hawaii, including research workers, extension agents, personnel engaged in instructional work, and administrative, professional, and technical personnel of the university;
- (12) Employees engaged in special, research, or demonstration projects approved by the governor;
- (13) Positions filled by inmates, kokuas, patients of state institutions, persons with severe physical or mental handicaps participating in the work experience training programs, and students and positions filled through federally funded programs that provide temporary public service employment such as the federal Comprehensive Employment and Training Act of 1973;
- (14) A custodian or guide at Iolani Palace, the Royal Mausoleum, and Hulihee Palace;

- (15) Positions filled by persons employed on a fee, contract, or piecework basis, who may lawfully perform their duties concurrently with their private business or profession or other private employment and whose duties require only a portion of their time, if it is impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State;
- (16) Positions of first deputies or first assistants of each department head appointed under or in the manner provided in section 6, Article V, of the State Constitution; three additional deputies or assistants either in charge of the highways, harbors, and airports divisions or other functions within the department of transportation as may be assigned by the director of transportation, with the approval of the governor; four additional deputies in the department of health, each in charge of one of the following:
  - ~~[(A) Behavioral]~~ behavioral health, environmental health, hospitals, and health resources administration, including other functions within the department as may be assigned by the director of health, with the approval of the governor;
  - ~~[(B) An]~~ an administrative assistant to the state librarian; and
  - ~~[(C) An]~~ an administrative assistant to the superintendent of education;
- (17) Positions specifically exempted from this part by any other law; provided that all of the positions defined by paragraph (9) shall be included in the position classification plan;
- (18) Positions in the state foster grandparent program and positions for temporary employment of senior citizens in occupations in which there is a severe personnel shortage or in special projects;
- (19) Household employees at the official residence of the president of the University of Hawaii;
- (20) Employees in the department of education engaged in the supervision of students during meal periods in the distribution, collection, and counting of meal tickets, and in the cleaning of classrooms after school hours on a less than half-time basis;
- (21) Employees hired under the tenant hire program of the housing and community development corporation of Hawaii; provided that not more than twenty-six per cent of the corporation's work force in any housing project maintained or operated by the corporation shall be hired under the tenant hire program;
- (22) Positions of the federally funded expanded food and nutrition program of the University of Hawaii that require the hiring of nutrition program assistants who live in the areas they serve;
- (23) Positions filled by severely handicapped persons who are certified by the state vocational rehabilitation office that they are able to perform safely the duties of the positions;
- (24) One public high school student to be selected by the Hawaii state student council as a nonvoting member on the board of education as authorized by the State Constitution;
- (25) Sheriff, first deputy sheriff, and second deputy sheriff;
- (26) A gender and other fairness coordinator hired by the judiciary; and
- (27) Positions in the Hawaii national guard youth challenge academy.

The director shall determine the applicability of this section to specific positions.

Nothing in this section shall be deemed to affect the civil service status of any incumbent as it existed on July 1, 1955."

SECTION 4. Section 201B-5, Hawaii Revised Statutes, is amended to read as follows:

**“§201B-5 Exemption of Hawaii tourism authority from administrative supervision of boards and commissions.** Notwithstanding any law to the contrary, the authority shall be exempt from section 26-35 with the exception of section 26-35(a)(2), (3), (7) ~~and~~, (8) ~~and~~ subsection (b).”

SECTION 5. Section 243-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The tax shall not be collected in respect to any benzol, benzene, toluol, xylol, or alternative fuel sold for use other than for operating internal combustion engines. With respect to these products, other than alternative fuels, the department by rule shall provide for the reporting and payment of the tax and for the keeping of records in respect thereto, in such manner as to collect, for each gallon of such product sold for use in internal combustion engines for the generation of power, or so used, the same tax or taxes as apply to each gallon of diesel oil. With respect to alternative fuels, the only tax collected shall be that provided in paragraphs (1), (2), and (3) of this subsection. This subsection shall not apply to aviation fuel sold for use in or used for airplanes.

- (1) Every distributor of any alternative fuel for operation of an internal combustion engine shall pay a license tax to the department of one-quarter of one cent for each gallon of such alternative fuel sold or used by the distributor;
- (2) Every distributor, in addition to the tax required under paragraph (1) of this subsection, shall pay a license tax to the department for each gallon of alternative fuel sold or used by the distributor for operating a motor vehicle or motor vehicles upon the public highways of the State at a rate proportional to that of the rates applicable to diesel oil in subsection (b), rounded to the nearest one-tenth of a cent, as follows:
  - (A) Ethanol, 0.145 times the rate for diesel;
  - (B) Methanol, 0.11 times the rate for diesel;
  - (C) Biodiesel, 0.25 times the rate for diesel;
  - (D) Liquefied petroleum gas, 0.33 times the rate for diesel; and
  - (E) For other alternative fuels, the rate shall be based on the energy content of the fuels as compared to diesel fuel, using a lower heating value of one hundred thirty thousand British thermal units per gallon as a standard for diesel, so that the tax rate, on an energy content basis, is equal to one-quarter the rate for diesel fuel.

The taxes so paid shall be paid into the state treasury and deposited in special funds or paid over in the same manner as provided in subsection (b) in respect of the tax on diesel oil;

- (3) If any user of alternative fuel furnishes to the distributor a certificate, in such form as the department shall prescribe, or the distributor who uses alternative fuel signs such certificate, certifying that the alternative fuel is for use in operating a motor vehicle or motor vehicles in areas other than upon the public highways of the State, the tax as provided by paragraphs (1) and (2) of this ~~section~~ subsection shall not be applicable; provided that no certificate shall be required if the alternative fuel is used for fuel and heating purposes in the home. In the event a certificate is not or cannot be furnished and the alternative fuel is in fact used for operating an internal combustion engine or operating a motor vehicle or motor vehicles in areas other than upon the public highways of the State, the user thereof may obtain a refund of all taxes thereon

imposed by such paragraphs. The department shall adopt rules to administer the refunding of such taxes imposed.”

SECTION 6. Section 245-23, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**“§245-23 Department to furnish stamps; designs, specifications, and denominations[; procurement].”**

SECTION 7. Section 249-31, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All vehicles and motor vehicles in the State as defined in section 249-1, including antique motor vehicles, except as otherwise provided in sections ~~[249-3 to] 249-4 and 249-6~~, shall be subject to a \$25 annual vehicle registration fee. The fee shall become due and payable on January 1, and shall be paid before April 1 in each year together with all other taxes and fees levied by this chapter; provided that should any county elect to renew motor vehicle registrations on a staggered basis as authorized by section 286-51, the state registration for that county shall likewise be staggered so that the state registration fee is due and payable at the same time and shall be collected together with the county fee. The state registration fee shall be deemed delinquent if not paid with the county registration fee. The respective counties shall collect this fee together with the vehicle registration tax collected for the county and shall transfer the moneys collected under this section to the State ~~[to be paid into the state highway fund].”~~

SECTION 8. Section 255D-4, Hawaii Revised Statutes, is amended to read as follows:

**“§255D-4 Authority to enter agreement.** The department may enter into the streamlined sales and use tax agreement with one or more states to simplify and modernize sales and use tax administration to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the department may act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers. The department may take other actions reasonably required to implement this section. Other actions authorized by this section include but are not limited to the adoption of rules not subject to chapter 91[;] and the joint procurement not subject to chapter 103D, with other member states, of goods and services in furtherance of the cooperative agreement. The department, or the department’s designee, may represent this State before the other states that are signatories to the agreement.”

SECTION 9. Section 269-1, Hawaii Revised Statutes, is amended by amending the definition of “enforcement officer” to read as follows:

““Enforcement officer” means any person employed and authorized by the commission to investigate any matter on behalf of the commission. The term also means a motor vehicle safety officer employed and assigned, pursuant to section 271-38, by the department of transportation to enforce sections 271-8, 271-12, 271-13, 271-19, and 271-29 through assessment of civil penalties as provided in section 271-27(h), (i), and (j).”

SECTION 10. Section 269-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Effective January 1, 1989, and January 1, 1990, the chairperson of the commission shall be paid a salary set by the governor within the range of \$69,748 to \$74,608 and \$72,886 to \$77,966 a year, respectively, and each of the other commissioners shall be paid a salary equal to ninety-five per cent of the chairperson’s salary. The commissioners shall be exempt from chapters 76 and 89 but shall be members of the state employees retirement system and shall be eligible to receive the benefits of any state or federal employee benefit program generally applicable to officers and employees of the State, including those under chapter ~~[87.]~~ 87A.

The commission is placed within the department of budget and finance for administrative purposes.”

SECTION 11. Section 269-17.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) ‘‘Nonresident alien’’ means a person not a citizen of the United States who is not defined as a resident alien by the ~~[United States Immigration and Naturalization Services.]~~ United States Citizenship and Immigration Services.”

SECTION 12. Section 271-4, Hawaii Revised Statutes, is amended by amending the definition of ‘‘enforcement officer’’ to read as follows:

“(15) ‘‘Enforcement officer’’ means any person employed and authorized by the commission to investigate any matter on behalf of the commission. The term also means a motor vehicle safety officer employed and assigned, pursuant to section 271-38, by the department of transportation to enforce sections 271-8, 271-12, 271-13, 271-19, and 271-29 through the assessment of civil penalties as provided in section 271-27(h), (i), and (j).”

SECTION 13. Section 302A-433, Hawaii Revised Statutes, is amended to read as follows:

“~~[§302A-433]~~ **Scope of adult and community education programs offered.** As rapidly as resources are available and interest is developed, instructional programs shall be initiated in the following fields:

- (1) Basic elementary education. A foundation program in reading and speaking English, writing, and arithmetic for persons with no schooling or only primary grade training;
- (2) Advanced elementary education. A program in advanced elementary education for those persons who have completed four to eight years of schooling and who desire to obtain more complete mastery of the fundamentals;
- (3) Secondary education. A program of secondary education for those adults who, in youth, left school or for some reason had their education curtailed and who now desire to continue their education; for those youths who have been excepted from compulsory attendance under section 302A-1132; and for those youths who are in need of courses to complete their high school graduation requirements;
- (4) Adult literacy education. A basic program in reading and writing English, and arithmetic for persons who need to develop or improve the mastery of basic literacy skills in these areas for purposes of enhancing their personal, social, or employment lives;
- (5) Homemaking and parent education. A program in homemaking and parent education for all those parents and other adults who desire training in family life, including child care, nursing, budgeting, and other instruction basic to homemaking;

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- (6) Community education. A program to facilitate understanding and enlightenment in civic duties, responsibilities, and obligations for all persons who desire to keep pace with today's community, national, and world developments and who realize the necessity of continuing study for the adequate fulfillment of their civic functions. Community education addresses responsibilities within a given community, especially concerns related to education and the schools, and offers additional services to supplement and enrich the educational program of in-school children and youths;
- (7) Naturalization training. The standard course of training provided by the ~~[United States Immigration and Naturalization Service,]~~ United States Citizenship and Immigration Services, which shall be provided to all those persons who have filed applications for United States citizenship and desire to enroll in such a course under the supervision of the department; and
- (8) Cultural opportunities. A program of adult and community education that will meet the interests and desires of those people who wish to enrich and to broaden their cultural, recreational, and social interests."

SECTION 14. Section 302A-1185, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) To enable new century charter schools to access state funding prior to the start of each school year, foster their fiscal planning, and enhance their accountability, the charter school administrative office shall:

- (1) Provide fifty per cent of a new century charter school's per pupil allocation based on the new century charter school's projected student enrollment no later than July 20 of each fiscal year; provided that the new century charter school shall submit to the charter school administrative office a projected student enrollment no later than May 15 of each year;
- (2) Provide an additional forty per cent of a new century charter school's per pupil allocation no later than November 15 of each year; provided that the new century charter school shall submit to the charter school administrative office:
  - (A) Student enrollment as verified on October 15 of each year, provided that the student enrollment shall be verified on the first day of business immediately prior to October 15 should that date fall on a weekend; and
  - (B) An accounting of the percentage of student enrollment who transferred from public schools established and maintained by the department, provided that these accountings shall also be submitted by the charter school administrative office to the legislature no later than twenty days prior to the convening of each regular session; and
- (3) ~~[The]~~ Provide the remaining ten per cent per pupil allocation of a new century charter school no later than January 1 of each year as a contingency balance to ensure fiscal accountability."

SECTION 15. Section 327G-3, Hawaii Revised Statutes, is amended by mending subsection (c) to read as follows:

"(c) A written advance mental health care directive may include the principal's nomination of a guardian ~~[of the person]~~. The court shall make its appointment of a guardian ~~[of the person]~~ in accordance with the principal's most recent nomination in a valid and unrevoked advance mental health care directive, except for good cause shown."



SECTION 16. Section 327G-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A duly appointed guardian [~~of the person of~~] for the principal shall comply with the principal’s preferences or instructions expressed in the advance mental health care directive and shall not revoke the principal’s advance mental health care directive, unless otherwise expressly authorized by a court of competent jurisdiction.”

SECTION 17. Section 327G-14, Hawaii Revised Statutes, is amended to read as follows:

“[~~§327G-14~~] **Optional form.** The following sample form may be used to create an advance mental health care directive. This sample form may be duplicated, or modified to suit the needs of the person. Any written document that contains the substance of the following information may be used in an advance mental health care directive:

### “ADVANCE MENTAL HEALTH CARE DIRECTIVE

#### Explanation

You have the right to give instructions about your own mental health care. You also have the right to name someone else to make mental health treatment decisions for you. This form lets you do either or both of these things. It also lets you express your wishes regarding the designation of your health care providers. If you use this form, you may complete or modify all or any part of it. You are free to use a different form.

Part 1 of this form is a list of options you may designate as part of your mental health care and treatment. For ease of designating specific instructions, mark those options in Part 1.

Part 2 of this form is a power of attorney for mental health care. This lets you name another individual as your agent to make mental health treatment decisions for you, if you become incapable of making your own decisions, or if you want someone else to make those decisions for you now, even though you are still capable of making your own decisions. You may name alternate agents to act for you if your first choice is not willing, able, or reasonably available to make decisions for you. Unless related to you, your agent may not be an owner, operator, or employee of a health care institution where you are receiving care.

You may allow your agent to make all mental health treatment decisions for you. However, if you wish to limit the authority of your agent, you may specify those limitations on the form. If you do not limit the authority of your agent, your agent will have the right to:

- (1) Consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a mental condition;
- (2) Select or discharge health care providers and institutions;
- (3) Approve or disapprove diagnostic tests, surgical procedures, and programs of medication; and
- (4) Approve or disapprove of electroconvulsive treatment.

Part 3 of this form lets you give specific instructions about any aspect of your mental health care and treatment. Choices are provided for you to express your wishes regarding the provision, withholding, or withdrawal of medication and treatment. Space is provided for you to add to the choices you have made or for you to write out any additional wishes.

Part 4 of this form must be completed in order to activate the advance mental health care directive. After completing this form, sign and date the form at the end and have the form witnessed by one or both of the two methods listed below. Give a copy of the signed and completed form to your physician, to any other health care providers you may have, to any health care institution at which you are receiving care, and to any mental health care agents you have named. You should talk to the persons you have named as agents to make sure that they understand your wishes and are willing to take the responsibility.

You have the right to revoke this advance mental health care directive or replace this form at any time, unless otherwise specified in writing in the advance mental health care directive.

If you are in imminent danger of causing bodily harm to yourself or others, or have been involuntarily committed to a health care institution for mental health treatment, the advance mental health care directive will not apply.

**PART 1  
CHECKLIST OF MENTAL HEALTH CARE OPTIONS**

NOTE TO PROVIDER: The following is a checklist of selections I have made regarding my mental health care and treatment. I include this statement to express my strong desire for you to acknowledge and abide by my rights, under state and federal laws, to influence decisions about the care I will receive. (Declarant: Put a check mark in the left-hand column for each section you have completed.)

- Designation of my mental health care agent(s).
- Authority granted to my agent(s).
- My preference for a court appointed guardian.
- My preference of treating facility and alternatives to hospitalization.
- My preferences about the physicians or other mental health care providers who will treat me if I am hospitalized.
- My preferences regarding medications.
- My preferences regarding electroconvulsive therapy (ECT or shock treatment).
- My preferences regarding emergency interventions (seclusion, restraint, medications).
- Consent for experimental drugs or treatments.
- Who should be notified immediately of my admission to a facility.
- Who should be prohibited from visiting me.
- My preferences for care and temporary custody of my children or pets.
- Other instructions about mental health care and treatment.

**PART 2  
DURABLE POWER OF ATTORNEY FOR MENTAL HEALTH  
TREATMENT DECISIONS**

(1) DESIGNATION OF AGENT: I designate the following individual as my agent to make mental health care decisions for me:

---

(name of individual you choose as agent)

---

|              |              |         |            |
|--------------|--------------|---------|------------|
| (address)    | (city)       | (state) | (zip code) |
| (home phone) | (work phone) |         |            |

OPTIONAL: If I revoke my agent’s authority or if my agent is not willing, able, or reasonably available to make a mental health care decision for me, I designate as my first alternate agent:

---

(name of individual you choose as first alternate agent)

---

(address) (city) (state) (zip code)

---

(home phone) (work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a mental health care decision for me, I designate as my second alternate agent:

---

(name of individual you choose as second alternate agent)

---

(address) (city) (state) (zip code)

---

(home phone) (work phone)

(2) AGENT’S AUTHORITY: My agent is authorized to make all mental health care treatment decisions for me, including decisions to provide, withhold, or withdraw medication and treatment, and all other forms of mental health care, except as I state here:

---



---

(Add additional sheets if needed.)

(3) WHEN AGENT’S AUTHORITY BECOMES EFFECTIVE: My agent’s authority becomes effective when my supervising health care provider who is a physician and one other physician or licensed psychologist determine that I am unable to make my own mental health care decisions.

(4) AGENT’S OBLIGATION: My agent shall make mental health care decisions for me in accordance with this power of attorney for mental health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make mental health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN: If a guardian [~~of the person~~] needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able, or reasonably available to act as guardian, I nominate the alternate agents whom I have named, in the order designated.

**PART 3  
INSTRUCTIONS FOR MENTAL HEALTH CARE AND TREATMENT**

If you are satisfied to allow your agent to determine what is best for you, you need not fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

- (6) My preference of treating facility and alternatives to hospitalization:
- (7) My preferences about the physicians or other mental health care providers who will treat me if I am hospitalized:
- (8) My preferences regarding medications:
- (9) My preferences regarding electroconvulsive therapy (ECT or shock treatment):

(10) My preferences regarding emergency interventions (seclusion, restraint, medications):

(11) Consent for experimental drugs or treatments:

(12) Who should be notified immediately of my admission to a facility:

(13) Who should be prohibited from visiting me:

(14) My preferences for care and temporary custody of my children or pets:

(15) My preferences about revocation of my advance mental health care directive during a period of incapacity:

(16) OTHER WISHES: (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add additional sheets if needed.)

**PART 4  
WITNESSES AND SIGNATURES**

(17) EFFECT OF COPY: A copy of this form has the same effect as the original.

(18) SIGNATURES: Sign and date the form here:

\_\_\_\_\_  
(date) (sign your name)

\_\_\_\_\_  
(address) (print your name)

\_\_\_\_\_  
(city) (state)

(19) WITNESSES: This power of attorney will not be valid for making mental health care decisions unless it is either: (a) signed by two qualified adult witnesses who are personally known to you and who are present when you sign or acknowledge your signature; or (b) acknowledged before a notary public in the State.

**AFFIRMATION OF WITNESSES**

Witness 1

I declare under penalty of false swearing pursuant to section 710-1062, Hawaii Revised Statutes, that the principal is personally known to me, that the principal signed or acknowledged this power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as agent by this document, and that I am not a health care provider, nor an employee of a health care provider or facility. I am not related to the principal by blood, marriage, or adoption, and to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

\_\_\_\_\_  
(date) (sign your name)

\_\_\_\_\_  
(address) (print your name)

\_\_\_\_\_  
(city) (state)

Witness 2

I declare under penalty of false swearing pursuant to section 710-1062, Hawaii Revised Statutes, that the principal is personally known to me, that the principal signed or acknowledged this power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as agent by this document, and that I am not a health care provider, nor an employee of a health care provider or facility. I am not related to the principal by blood, marriage, or adoption, and to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

\_\_\_\_\_  
 (date) \_\_\_\_\_ (sign your name)  
 \_\_\_\_\_  
 (address) \_\_\_\_\_ (print your name)  
 \_\_\_\_\_  
 (city) (state)

DECLARATION OF NOTARY

State of Hawaii  
 County of \_\_\_\_\_  
 On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, \_\_\_\_\_ (insert name of notary public) appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it.  
 Notary Seal \_\_\_\_\_

\_\_\_\_\_  
 (Signature of Notary Public)''''

SECTION 18. Section 333F-1, Hawaii Revised Statutes, is amended by amending the definition of "representative" to read as follows:

''"Representative" means any individual who can advise and advocate for a person with developmental disabilities or mental retardation and who shall serve at the request and pleasure of such person; provided that if the person with developmental disabilities or mental retardation is a minor or is legally incapacitated and has not requested a representative, the parent or guardian [~~of the person~~] may request a representative to assist on behalf of the person with developmental disabilities or mental retardation."

SECTION 19. Section 333F-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

''(b) The director, if so appointed, shall have all the powers and duties of a guardian [~~of the person~~] duly appointed by the court; provided that the director shall not be liable in damages for any tortious act committed by the person."

SECTION 20. Section 346-312.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

''(d) The determination of a drug's safety and efficacy shall be consistent with the standards set forth in the peer-reviewed literature and other available sources, including but not limited to:

- (1) The American Hospital Formulary Service Drug Information;
- (2) The United States Pharmacopoeia Drug Information;

- (3) The DRUGDEX System; and
- (4) The [~~American Medical Association Drug Evaluations.~~] American Medical Association Drug Evaluations.”

SECTION 21. Section 353-25, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**“§353-25 Powers and duties of [~~guardian.~~] conservator.”**

SECTION 22. Section 353-26, Hawaii Revised Statutes, is amended to read as follows:

**“§353-26 Removal of conservator.** The conservator may be removed, and another conservator appointed in the former [~~guardian’s~~] conservator’s place, whenever the judge thinks there is just cause for removal.”

SECTION 23. Section 353-66, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) The Hawaii paroling authority may require a paroled prisoner to undergo and complete a substance abuse treatment program when the paroled prisoner has committed a violation of the terms and conditions of parole involving possession or use, not including to distribute or manufacture as defined in section 712-1240, of any dangerous drug, detrimental drug, harmful drug, intoxicating compound, marijuana, or marijuana concentrate, as defined in section 712-1240, unlawful methamphetamine trafficking as provided in section 712-1240.6, or involving possession or use of drug paraphernalia under section 329-43.5. If the paroled prisoner fails to complete the substance abuse treatment program or the Hawaii paroling authority determines that the paroled prisoner cannot benefit from any [~~substance abuse program,~~] substance abuse treatment program, the paroled prisoner shall be subject to revocation of parole and return to incarceration. As a condition of parole, the Hawaii paroling authority may require the paroled prisoner to:

- (1) Be assessed by a certified substance abuse counselor for substance abuse dependency or abuse under the applicable Diagnostic and Statistical Manual and Addiction Severity Index;
- (2) Present a proposal to receive substance abuse treatment in accordance with the treatment plan prepared by a certified substance abuse counselor through a substance abuse treatment program that includes an identified source of payment for the treatment program;
- (3) Contribute to the cost of the substance abuse treatment program; and
- (4) Comply with any other terms and conditions for parole.

As used in this subsection, “substance abuse treatment program” means drug or substance abuse treatment services provided outside a correctional facility by a public, private, or nonprofit entity that specializes in treating persons who are diagnosed with having substance abuse or dependency and preferably employs licensed professionals or certified substance abuse counselors.

Nothing in this subsection shall be construed to give rise to a cause of action against the State, a state employee, or a treatment provider.”

SECTION 24. Section 414D-233, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A public benefit corporation shall give the attorney general written notice that it intends to dissolve before the time it delivers the articles of dissolution

to the [department] director. The notice shall include a copy or summary of the plan of dissolution.”

SECTION 25. Section 431:10-202, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10-202 Definitions.** For purposes of this part:

[(a) ~~Insurable interest~~] “Insurable interest” includes only interests as follows:

- (1) In the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection.
- (2) In the case of other persons, a lawful and substantial economic interest in having the life, health, or bodily safety of the individual insured continue, as distinguished from an interest which would arise only by, or would be enhanced in value by, the death, disablement, or injury of the individual insured.
- (3) An individual party to a contract or option for the purchase or sale of an interest in a business partnership or firm, or of shares of stock of a close corporation or of an interest in such shares, has an insurable interest in the life of each individual party to the contract and for the purposes of the contract only, in addition to any insurable interest which may otherwise exist as to the life of the individual.
- (4) A charitable organization as defined in section 467B-1 [~~and registered under section 467B-2~~] has an insurable interest in the life of each proposed insured who joins with said organization in applying for a life insurance policy naming said organization as owner and irrevocable beneficiary.

[(b) ~~Policy~~] “Policy” means the written instrument in which a contract of insurance and any endorsement or addendum thereto is set forth.”

SECTION 26. Section 431:10C-109, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) If the card or affidavit is not returned within the period specified, the insurer may:

- (1) If the premiums for the period shown on the motor vehicle insurance identification card have been prepaid, withhold the unearned portions of the premiums until the identification card or an affidavit signed by the insured has been returned. In addition, all premiums shall be considered “earned” until the card is returned.
- (2) If the premiums for the period shown on the identification card have not been paid in full, bring a civil action for three times the unpaid portion of the premiums. Notwithstanding section 607-14 [~~and section 607-17~~], the insurer shall be awarded reasonable attorney’s fees and court costs. If the motor vehicle insurance identification card is returned after the civil action is filed but before the matter is taken to trial, the insurer shall be awarded damages of not less than \$100, but not more than the amount of the unpaid premiums together with reasonable attorney’s fees and costs as provided in this section.”

SECTION 27. Section 431:10C-307.8, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10C-307.8 Insurance fraud investigations unit.** (a) There is established in the insurance division an insurance fraud investigations unit.

(b) The unit shall employ attorneys, investigators, investigator assistants, and other support staff as necessary to promote the effective and efficient conduct of the unit's activities. Notwithstanding any other law to the contrary, the attorneys may represent the State in any judicial or administrative proceeding to enforce all applicable state laws relating to insurance fraud, including but not limited to criminal prosecutions and actions for declaratory and injunctive relief. Investigators may serve process and apply for and execute search warrants pursuant to chapter 803 and the rules of court but shall not otherwise have the powers of a police officer or deputy sheriff. The commissioner may hire such employees not subject to chapter 76.

(c) The purpose of the insurance fraud investigations unit shall be to conduct a statewide program for the prevention, investigation, and prosecution of insurance fraud cases and violations of all applicable state laws relating to insurance fraud. The insurance fraud investigations unit may also review and take appropriate action on complaints relating to insurance fraud.

~~[(d) Funding for the insurance fraud investigations unit shall come from the motor vehicle insurance administration revolving fund.]~~

SECTION 28. Section 431:19-102.2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any captive insurance company formed pursuant to this section shall be subject to articles 5, 10, 10A, 10B, 10C, 10D, 10E, 10F, 10G, 12, and 15~~[, and 17]~~ of ~~[chapter 431]~~ this chapter in addition to all other applicable law.”

SECTION 29. Section 431P-3, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

“(h) The board may appoint, not subject to chapter 76, an executive director of the fund whose salary shall be set by the board. The board may employ, not subject to chapter 76, technical experts and officers, agents, and employees, permanent or temporary, as required. The board may also contract with persons, not subject to chapters 76~~[, 77,]~~ and 78 when in the determination of the board, the services to be performed are unique and essential to the execution of the functions of the fund.”

SECTION 30. Section 432E-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The provider shall discuss with the enrollee and the enrollee's immediate family both ~~[living wills]~~ advanced health-care directives and durable powers of attorney in relation to medical treatment, as provided for in chapter ~~[327D]~~ 327E and section 551D-2.5.”

SECTION 31. Section 453D-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In addition to any other acts or conditions provided by law, the director may refuse to renew, reinstate, or restore, and may deny, revoke, suspend, or condition in any manner, any license for any one or more of the following acts or conditions on the part of a licensee or license applicant:

- (1) Failing to meet or maintain the conditions and requirements necessary to qualify for the granting of a license;
- (2) Engaging in false, fraudulent, or deceptive advertising, or making untruthful or improbable statements;
- (3) Being addicted to, dependent on, or a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, opium, cocaine, or other drugs or derivatives of a similar nature;



- (4) Practicing the licensed profession while impaired by alcohol, drugs, physical disability, or mental instability;
- (5) Procuring a license through fraud, misrepresentation, or deceit;
- (6) Aiding and abetting an unlicensed person to directly or indirectly perform activities requiring a license;
- (7) Professional misconduct, incompetence, gross negligence, or manifest incapacity, in the practice of the licensed profession;
- (8) Engaging in conduct or practice contrary to recognized standards of ethics for the licensed profession;
- (9) Violating any condition or limitation upon which a ~~[condition]~~ conditional or temporary license was issued;
- (10) Engaging in business under a past or present license issued pursuant to the licensing laws, in a manner causing injury to one or more members of the public;
- (11) Failing to comply with, observe, or adhere to any law in a manner such that the director deems the applicant or holder to be an unfit or improper person to hold a license;
- (12) Having had a license revoked or suspended, or having been the subject of other disciplinary action, by another state or a federal agency for any reason provided by the licensing laws or this section;
- (13) Having been convicted of a crime, whether by nolo contendere or otherwise, directly related to the qualifications, functions, or duties of the licensed profession;
- (14) Failing to report in writing to the director any disciplinary decision issued against the licensee or applicant in another jurisdiction within thirty days of the disciplinary decision;
- (15) Employing, utilizing, or attempting to employ or utilize, at any time, any person not licensed under the licensing laws where licensure is required; or
- (16) Violating this chapter, chapter 436B, or any rule or order of the director.”

SECTION 32. Section 461-11.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[§461-11.5]~~ **Return of prescription drugs.** Prescription drugs previously dispensed or distributed by a pharmacy for administration to patients in an institutional facility by personnel of the institutional facility may be returned to and redispensed or redistributed by the pharmacist if the prescription drug:

- (1) Is in:
  - (A) Its original dispensed, unopened, untampered multiple dose container or unopened, untampered single user unit; or
  - (B) An in-use multiple dose container subject to appropriate safeguards as defined in rules for public health or operational considerations;
- (2) Has remained at all times under the control or direction of a person in the institutional facility or the pharmacy trained and knowledgeable in the storage of drugs, including periods in transit by any carrier for hire or person or entity hired solely to transport prescription drugs;
- (3) Is not adulterated or misbranded;
- (4) Has been stored under conditions meeting United States Pharmacopoeia standards;
- (5) Is returned and redispensed or redistributed before the expiration date or use by date on the multiple dose container or single user unit;

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- (6) Has not been in the possession of an individual member of the public; and
- (7) Is not included within the classification of controlled substances, as defined in applicable federal and state laws.

Nothing in this [{}section{}] shall be construed to relieve any person from any requirement prescribed by law with respect to drugs included or that may be included within the classification of controlled substances, as defined in applicable federal and state laws. Previously billed returned drugs shall be subject to crediting to the payer pursuant to chapter 328B.”

SECTION 33. Section 478-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The provisions of this chapter (except for this section and section 478-3) shall not apply to any:

- (1) Indebtedness that is secured by a first mortgage lien on real property, and is agreed to or incurred after May 30, 1980;
- (2) Consumer credit agreement of sale made after May 30, 1980, under which a vendor agrees to sell real property to a vendee but retains legal title to the real property and in which the rate of interest or the manner in which such rate shall be determined is clearly stated. As used in this paragraph, “agreement of sale” includes subagreement of sale or other subsequent subagreement of sale made on or after June 18, 1982. Notwithstanding the first sentence of this paragraph, with respect to any consumer credit agreement of sale made on or after July 1, 1985, upon extension at maturity or renegotiation thereof, the maximum rate of interest charged thereafter shall not be more than the greater of the rate of interest payable under the agreement of sale immediately prior to such maturity or renegotiation or four percentage points above the highest weekly average yield on United States Treasury securities adjusted to a constant maturity of three years, as made available by the Federal Reserve Board within sixty days prior to the time of extension or renegotiation;
- (3) Indebtedness that is secured by a purchase-money junior mortgage lien on real property that is agreed to and incurred after June 18, 1982; provided that purchase-money junior mortgage lien means a mortgage that is subordinate in lien priority to an existing mortgage on the same real property that is given to the seller as part of the buyer’s consideration for the purchase of real property and delivered at the same time that the real property is transferred as a simultaneous part of the transaction;
- (4) Transaction for the sale of goods, services, or both, by a seller in the business of selling such goods or services, if the transaction is subject to chapter 476 or the rate of interest charged by the seller in the transaction does not exceed eighteen per cent a year; provided that this paragraph shall not apply to any transaction regulated by chapter 412 or 431 or to any transaction for the sale of financial services. This paragraph shall not be deemed to limit any seller’s right to charge interest under section 478-2;
- (5) Payment of any claim under section 431:13-108; or
- (6) Indebtedness secured by a time share interest defined in [{}section{}] 514E-1, if that time share interest is not otherwise governed by section 478-8(a) or 478-8(b)(1) to (4), and if the rate of interest does not exceed eighteen per cent per year. This [{}paragraph{}] shall not be deemed to limit a seller’s right to charge interest under section 478-2.”

SECTION 34. Section 486-36, Hawaii Revised Statutes, is amended to read as follows:

“**§486-36 Remedies.** Notwithstanding other penalties provided in this chapter, including but not limited to penalties provided under section 486-32, the board may enforce this chapter in both administrative and judicial proceedings:

- (1) Administrative. If the administrator determines that any person is violating any provision of this chapter or any rule adopted thereunder, or any variance or exemption or waiver issued pursuant thereto, the administrator may have that person served with a notice of violation and an order. The notice shall specify the alleged violation. The order may require that the alleged violator do any or all of the following:
  - (A) Cease and desist from the violation;
  - (B) Pay an administrative penalty not to exceed \$2,000 for each day of violation;
  - (C) Correct the violation at the alleged violator’s own expense; or
  - (D) Appear before the board at a time and place specified in the order and answer the charges complained of.

The order shall become final twenty calendar days after service unless within those twenty calendar days the alleged violator requests in writing a hearing before the board. Upon such request the board shall specify a time and place for the alleged violator to appear. After a hearing pursuant to this [{}paragraph{}], the board may affirm, modify, or rescind the order as appropriate.

Factors to be considered in imposing the administrative penalty may include the nature and history of the violation and any prior violation and the opportunity, difficulty, and history of corrective action. It is presumed that the violator’s economic and financial conditions allow payment of the penalty and the burden of proof to the contrary is on the violator; and

- (2) Judicial. The board may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. In any judicial proceeding to enforce the administrative penalty imposed pursuant to this chapter, the board shall be required to show that:
  - (A) Notice was given;
  - (B) A hearing was held or the time granted for requesting a hearing had expired without such a request;
  - (C) The administrative penalty was imposed; and
  - (D) The penalty imposed remains unsatisfied.

The board may also institute a civil action in any court of competent jurisdiction for injunctive relief to enjoin violation of any order issued or rule adopted pursuant to this chapter, in addition to any other remedy or penalty provided for under this chapter.”

SECTION 35. Section 507-46, Hawaii Revised Statutes, is amended to read as follows:

“**§507-46 Priority, record of; satisfaction.** The lien shall relate to and take effect from the time of the visible commencement of operations for the improvement; it shall rank equally in priority subject to the provisos hereinafter contained with all other mechanics’ and materialmen’s liens and shall have priority over all other liens of any nature, except liens in favor of any branch of the government and mortgages, liens or judgments recorded or filed prior to the time of the visible

commencement of operation; provided that all liens for wages for labor performed in the completion of the improvement, but not exceeding \$300 for each claimant, shall have priority as a class over all other mechanics' and materialmen's liens where claims are filed by:

- (1) The person who actually performed the labor;
- (2) The person's legal representative in the event of death or incapacity; or
- (3) The director of labor and industrial relations pursuant to chapter 371;

and provided further that where a mortgage is recorded prior to the date of completion, and all or a portion of the money advanced under and secured by the mortgage is thereafter used for the purpose of paying for the improvement, the mortgagee shall be entitled, to the extent of the payments, to priority over liens of mechanics and materialmen, but no such priority shall be allowed unless the mortgage recites that the purpose of the mortgage is to secure the moneys advanced for the purpose of paying for the improvement in whole or in part. Payments made in good faith to the general contractor for such purposes shall be presumed to have been used for the purpose of paying for the improvement. Whenever the lien or claim of lien herein provided is satisfied (other than by the limitations expressed in section 507-43), a written notice thereof shall, at the expense of the lienee, be filed with the clerk of the circuit court, which shall be noted in the mechanics' lien record, and if title to the land involved is registered in the land court and the lien did not attach solely to the interest of the lessee in one or more leasehold time share interests, it shall also be filed in the office of the assistant registrar of the court."

SECTION 36. Section 551A-2, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (c) and (d) to read:

"(c) The public guardian shall assist the court, as the court may request or direct, in proceedings for the appointment of a guardian [~~of the person~~] and in the supervision of persons, corporations, or agencies which have been appointed as guardians [~~of the person~~].

(d) The public guardian shall advise and assist persons, corporations, and agencies which are seeking appointment as a guardian for an incapacitated person. The public guardian shall also provide advice, information, and guidance to the persons, corporations, or agencies who have been appointed as guardian [~~of the person~~] to assist them in the discharge of their duties."

2. By amending subsection (f) to read:

"(f) The public guardian shall develop programs of public education on guardianship and alternatives to guardianship and encourage the development of private guardians able and willing to serve as guardian [~~of the person~~]."

SECTION 37. Section 560:5-409, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The appointment of a conservator or the entry of another protective order shall not be deemed a determination of incapacity of the protected person under article part 3."

SECTION 38. Section 560:5-601, Hawaii Revised Statutes, is amended by amending the definition of "ward" to read as follows:

"'Ward' means an incapacitated person for whom a guardian [~~of the person~~] has been appointed and who, because of the terms of the appointment of the guardian, lacks the legal power to consent to sterilization."

SECTION 39. Section 560:6-101, Hawaii Revised Statutes, is amended by amending the definition of "party" to read as follows:

““Party” means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party account. A payable-on-death payee or beneficiary of a trust account is a party only after the account becomes payable to the payable-on-death payee or beneficiary by reason of the payable-on-death payee’s or beneficiary’s surviving the original payee or trustee. Unless the context otherwise requires, it includes a guardian [~~of the person or of the property~~], conservator, personal representative, or assignee, of a party. It also includes a person identified as a trustee of an account for another whether or not a beneficiary is named, but it does not include any named beneficiary unless the beneficiary has a present right of withdrawal;”

SECTION 40. Section 571-2, Hawaii Revised Statutes, is amended by amending the definition of “guardianship of a minor” to read as follows:

““Guardianship of a minor” means the duty and authority to make important decisions in matters having a permanent effect on the life and development of the minor and to be concerned about the minor’s general welfare. It includes, but shall not necessarily be limited, in either number or kind to:

- (1) The authority to consent to marriage, to enlistment in the armed forces of the United States, or to major medical, psychiatric, and surgical treatment; to represent the minor in legal actions; to make other decisions concerning the minor of substantial legal significance;
- (2) The authority and duty of reasonable visitation, except to the extent that the right of visitation has been limited by court order;
- (3) The rights and responsibilities of legal custody when guardianship [~~of the person~~] is exercised by the natural or adoptive parent, except where legal custody has been vested in another individual, agency, or institution; and
- (4) The authority to consent to the adoption of the minor and to make any other decision concerning the minor that the minor’s parents could make, when the rights of the minor’s parents, or only living parent, have been judicially terminated as provided for in the statutes governing termination of parental rights to facilitate legal adoption, or when both of the minor’s legal parents are deceased.”

SECTION 41. Section 578-8, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) In cases where a child is adopted from a foreign country and is brought into the State, the court, in its discretion, may dispense with a hearing upon receipt of a sworn affidavit, ex-parte, from the adoptive parents requesting that the hearing be dispensed with, and upon a finding that the issues it would have reviewed have received full consideration by the country from which the child was adopted and the [~~United States Immigration and Naturalization Service.~~] United States Citizenship and Immigration Services.”

SECTION 42. Section 607-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The fees prescribed by subsection (b) shall be paid to the clerk of the district court as costs of court by the person instituting the action or proceeding, or offering the paper for filing, or causing the document to be issued or the services to be performed in the district court; provided that nothing in subsection (b) shall apply to cases of adults charged with commission of a crime, or minors referred to the district court by the family court; provided further that for the purposes of subsection (b), “judgment” includes an order from which an appeal lies; and provided further that [~~one-half of~~] the fees [~~collected pursuant to paragraphs (7), (8), and (9) of~~

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subsection (b)] prescribed by subsection (b)(10) shall be deposited by the clerk of the district court into the judiciary computer system special fund pursuant to section 601-3.7. One-half of the fees collected pursuant to paragraphs (7), (8), and (9) of subsection (b) also shall be deposited into the fund.”

SECTION 43. Section 672E-5, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§672E-5~~ **Written notice of acceptance; access to premises.** (a) The claimant, within thirty days after receipt of a contractor’s settlement offer, may accept any offer by serving the contractor with a written notice of acceptance; provided that an association shall have forty-five days to respond. If no written notice of acceptance is served, the settlement offer shall be deemed ~~[[rejected]]~~.

(b) If a claimant accepts a contractor’s offer to repair, the claimant shall ~~[[provide]]~~ unfettered access to perform and complete the construction within the timetable stated in the settlement offer.”

SECTION 44. Section 302A-1502.5, Hawaii Revised Statutes, is repealed.

SECTION 45. Act 53, Session Laws of Hawaii 2003, is amended by amending section 3 to read as follows:

“SECTION 3. This Act shall take effect upon its approval; provided that the amendments made to section 514A-90(b), Hawaii Revised Statutes, by this Act shall not be repealed when section 514A-90 is reenacted on December 31, ~~[2003,]~~ 2007, pursuant to section 4 of Act 39, Session Laws of Hawaii 2000.”

SECTION 46. Act 10, Session Laws of Hawaii 2004, is amended by amending section 18 to read as follows:

“SECTION 18. This Act shall take effect upon its approval, provided that:

- (1) Section 3 shall take effect December 31, 2004;
- (2) Section 7 shall take effect retroactive to April 1, 2003~~;~~, and the amendments made to section 201B-2, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on June 30, 2007, pursuant to section 14(2) of Act 58, Session Laws of Hawaii 2004;
- (3) Section 13 shall take effect retroactive to April 19, 2000;
- (4) Section 14 shall take effect retroactive to April 27, 2000;
- (5) Section 15 shall take effect retroactive to June 29, 2003; and
- (6) Section 16 shall take effect retroactive to May 23, 2003.”

SECTION 47. Act 29, Session Laws of Hawaii 2004, is amended by amending the prefatory language in section 2 to read as follows:

“SECTION 2. Section 163D-3, Hawaii Revised Statutes, is amended by amending ~~[section]~~ subsection (b) to read as follows:”

SECTION 48. Act 51, Session Laws of Hawaii 2004, is amended by amending the prefatory language in section 6 to read as follows:

“SECTION 6. ~~[Section 302A,]~~ Section 302A-101, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:”

SECTION 49. Act 57, Session Laws of Hawaii 2004, is amended by amending section 17 to read as follows:

“SECTION 17. This Act shall take effect upon its approval[-]; provided that the amendments made to section 28-8.3, Hawaii Revised Statutes, by this Act shall not be repealed when section 28-8.3, Hawaii Revised Statutes, is reenacted on June 30, 2007 pursuant to section 14(2) of Act 58, Session Laws of Hawaii 2004.”

SECTION 50. Act 58, Session Laws of Hawaii 2004, is amended by amending section 14 to read as follows:

“SECTION 14. This Act shall take effect [øñ] upon its approval; provided that:

- (1) The amendments made to sections 40-1, 40-4, and 40-6, Hawaii Revised Statutes, by part I of this Act shall not be repealed when those sections are reenacted on June 30, 2005, by section 24 of Act 115, Session Laws of Hawaii 1998;
- (2) Part I shall be repealed on June 30, 2007, and sections 28-8.3, [~~40-1, 40-4, and 40-6,~~] 201B-2, and 201B-11, Hawaii Revised Statutes, shall be reenacted in the form in which they read on [~~June 29, 2005;~~] May 5, 2004, and sections 40-1, 40-4, and 40-6, Hawaii Revised Statutes, shall be reenacted in the form in which they read on June 30, 1986; and
- (3) Section 9 shall take effect July 1, 2004.”

SECTION 51. Act 141, Session Laws of Hawaii 2004, is amended by amending section 7 to read as follows:

“SECTION 7. This Act shall take effect on July 1, 2004, and shall be repealed on June 30, 2009[-]; provided that sections 269-30 and 269-33, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act.”

SECTION 52. Act 165, Session Laws of Hawaii 2004, is amended by amending section 7 to read as follows:

“SECTION 7. This Act shall take effect upon its approval and shall apply to license renewals for the licensing biennium beginning on January 1, 2008[-]; provided that amendments made to section 461-1, Hawaii Revised Statutes, by this Act shall not be repealed when section 461-1, Hawaii Revised Statutes, is reenacted pursuant to section 11 of Act 190, Session Laws of Hawaii 2004.”

SECTION 53. Act 239, Session Laws of Hawaii 2004, is amended by amending section 3 to read as follows:

“SECTION 3. This Act shall take effect upon its approval[-]; provided that amendments made to section 461-1, Hawaii Revised Statutes, by this Act shall not be repealed when section 461-1, Hawaii Revised Statutes, is reenacted pursuant to section 11 of Act 190, Session Laws of Hawaii 2004.”

SECTION 54. Statutory material to be repealed is bracketed and stricken.<sup>1</sup> New statutory material is underscored.

SECTION 55. This Act shall take effect upon its approval, provided that:

- (1) Section 2 shall take effect on July 1, 2005;

## ACT 23

- (2) Section 3 shall take effect retroactive to July 1, 2004; provided that the amendments made to section 76-16(b), Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on July 1, 2006, pursuant to section 5 of Act 128, Session Laws of Hawaii 2004;
- (3) Section 4 shall take effect retroactive to April 23, 2004;
- (4) Section 7 shall take effect retroactive to October 1, 2004;
- (5) Section 8 shall take effect retroactive to January 1, 2005;
- (6) Section 14 shall take effect retroactive to June 17, 2004;
- (7) Sections 15, 16, 17, 18, 19, 21, 22, 36, 38, 39, 40 and 42 shall take effect retroactive to January 1, 2005;
- (8) Section 45 shall take effect retroactive to May 13, 2003; and
- (9) Section 50 shall take effect retroactive to May 6, 2004.

(Approved April 20, 2005.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 23

S.B. NO. 842

### A Bill for an Act Relating to Withholding of Tax on the Disposition of Real Property by Nonresident Persons.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 235-68, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) As used in this section:

“Nonresident person” means every person other than a resident person.

“Property” or “real property” has the meaning as the same term is defined in section 231-1.

“Resident person” means any:

- (1) Individual included in the definition of resident in section 235-1;
- (2) Corporation incorporated or granted a certificate of authority under chapter 414, 414D, or 415A;
- (3) Partnership formed or registered under chapter 425 or 425E;
- (4) Foreign partnership qualified to transact business pursuant to chapter 425 or 425E;
- (5) Limited liability company formed under chapter 428 or any foreign limited liability company registered under chapter 428; provided that if a single member limited liability company has not elected to be taxed as a corporation, the single member limited liability company shall be disregarded for purposes of this section and this section shall be applied as if the sole member is the transferor;
- (6) Limited liability partnership formed under chapter 425;
- (7) Foreign limited liability partnership qualified to transact business under chapter 425;
- (8) Trust included in the definition of resident trust in section 235-1; or
- (9) Estate included in the definition of resident estate in section 235-1.

“Transferee” means any person, the State and the counties and their respective subdivisions, agencies, authorities, and boards, acquiring real property which is located in Hawaii.

“Transferor” means any person disposing real property [which] that is located in Hawaii.”



SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval and apply to taxable years beginning after December 31, 2004; provided that nothing in this Act shall be construed to create any inference with respect to the proper tax treatment of single member limited liability companies for taxable years prior to the taxable year beginning on January 1, 2005.

(Approved April 22, 2005.)

ACT 24

H.B. NO. 624

A Bill for an Act Making an Emergency Appropriation for Collective Bargaining Cost Items for Public Employees.

*Be It Enacted by the Legislature of the State of Hawaii:*

PART I

SECTION 1. This Act is being recommended by the governor for immediate passage, in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. The purpose of this Act is to appropriate funds to enable payment of collective bargaining increases retroactive to July 2004 for bargaining units (1) and (10).

SECTION 3. Collective bargaining negotiations with the United Public Workers were not concluded until after the 2004 legislative session. Immediate passage of this Act will allow United Public Workers' members to begin receiving pay raises comparable to those already being received by other units.

SECTION 4. There are appropriated or authorized from the sources of funding indicated below to program planning, analysis, and budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal year 2004-2005, all collective bargaining cost items in the agreements negotiated with the exclusive bargaining representative of collective bargaining unit (1):

|               | <u>FY 2004-2005</u> |
|---------------|---------------------|
| General funds | \$5,378,655         |
| Special funds | \$1,961,221         |
| Federal funds | \$ 469,229          |
| Other funds   | \$ 128,749          |

SECTION 5. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments and expended for the purposes of this part.

PART II

SECTION 6. There are appropriated or authorized from the sources of funding indicated below to program planning, analysis, and budgeting (BUF 101)

**ACT 24**

the following sums, or so much thereof as may be necessary, to fund for fiscal year 2004-2005 the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees in the executive branch who are excluded from collective bargaining and who are under the same compensation plans as those officers and employees who belong to collective bargaining unit (1):

|               | <u>FY 2004-2005</u> |
|---------------|---------------------|
| General funds | \$314,384           |
| Special funds | \$ 2,222            |
| Federal funds | \$ 13,180           |
| Other funds   | \$ 1,934            |

SECTION 7. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments and expended for the purposes of this part.

**PART III**

SECTION 8. There is appropriated or authorized from the source of funding indicated below to administration (JUD 601) the following sum, or so much thereof as may be necessary, to fund for fiscal year 2004-2005, all collective bargaining cost items in the agreements negotiated with the exclusive bargaining representative of collective bargaining unit (1):

|               | <u>FY 2004-2005</u> |
|---------------|---------------------|
| General funds | \$84,957            |

SECTION 9. Funds appropriated or authorized by this part shall be allotted by the chief justice and expended for the purposes of this part.

**PART IV**

SECTION 10. There is appropriated or authorized from the source of funding indicated below to hospital care - Hawaii health systems corporation (HTH 210) the following sum, or so much thereof as may be necessary, to fund for fiscal year 2004-2005, all collective bargaining cost items in the agreements with the exclusive bargaining representative of collective bargaining unit (1) and assigned to the Hawaii health systems corporation:

|               | <u>FY 2004-2005</u> |
|---------------|---------------------|
| General funds | \$746,689           |

SECTION 11. Funds appropriated or authorized by this part shall be allotted by the director of finance to the Hawaii health systems corporation and expended for the purposes of this part.

**PART V**

SECTION 12. There is appropriated or authorized from the source of funding indicated below to hospital care - Hawaii health systems corporation (HTH 210) the following sum, or so much thereof as may be necessary, to fund for fiscal year 2004-2005, the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees assigned to the Hawaii health systems corporation who are excluded from collective bargaining

and who are under the same compensation plans as those officers and employees who belong to collective bargaining unit (1):

|               |                     |
|---------------|---------------------|
|               | <u>FY 2004-2005</u> |
| General funds | \$72,203            |

SECTION 13. Funds appropriated or authorized by this part shall be allotted by the director of finance to the Hawaii health systems corporation and expended for the purposes of this part.

PART VI

SECTION 14. There are appropriated or authorized from the sources of funding indicated below to program planning, analysis, and budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal year 2004-2005, all collective bargaining cost items in the agreements negotiated with the exclusive bargaining representative of collective bargaining unit (10):

|               |                     |
|---------------|---------------------|
|               | <u>FY 2004-2005</u> |
| General funds | \$376,466           |
| Federal funds | \$ 10,308           |

SECTION 15. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments and expended for the purposes of this part.

PART VII

SECTION 16. There are appropriated or authorized from the sources of funding indicated below to program planning, analysis, and budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal year 2004-2005, the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees in the executive branch who are excluded from collective bargaining and who are under the same compensation plans as those officers and employees who belong to collective bargaining unit (10):

|               |                     |
|---------------|---------------------|
|               | <u>FY 2004-2005</u> |
| General funds | \$6,909             |
| Other funds   | \$ 300              |

SECTION 17. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments and expended for the purposes of this part.

PART VIII

SECTION 18. There is appropriated or authorized from the source of funding indicated below to administration (JUD 601) the following sum, or so much thereof as may be necessary, to fund for fiscal year 2004-2005, all collective bargaining cost items in the agreements negotiated with the exclusive bargaining representative of collective bargaining unit (10):

|               |                     |
|---------------|---------------------|
|               | <u>FY 2004-2005</u> |
| General funds | \$7,977             |

**ACT 24**

SECTION 19. Funds appropriated or authorized by this part shall be allotted by the chief justice and expended for the purposes of this part.

**PART IX**

SECTION 20. There is appropriated or authorized from the source of funding indicated below to administration (JUD 601) the following sum, or so much thereof as may be necessary, to fund for fiscal year 2004-2005, the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees of the judiciary who are excluded from collective bargaining and who are under the same compensation plans as those officers and employees who belong to collective bargaining unit (10):

|               | <u>FY 2004-2005</u> |
|---------------|---------------------|
| General funds | \$103               |

SECTION 21. Funds appropriated or authorized by this part shall be allotted by the chief justice and expended for the purposes of this part.

**PART X**

SECTION 22. There is appropriated or authorized from the source of funding indicated below to hospital care - Hawaii health systems corporation (HTH 210) the following sum, or so much thereof as may be necessary, to fund for fiscal year 2004-2005, all collective bargaining cost items in the agreements with the exclusive bargaining representative of collective bargaining unit (10) assigned to the Hawaii health systems corporation:

|               | <u>FY 2004-2005</u> |
|---------------|---------------------|
| General funds | \$188,954           |

SECTION 23. Funds appropriated or authorized by this part shall be allotted by the director of finance to the Hawaii health systems corporation and expended for the purposes of this part.

**PART XI**

SECTION 24. There is appropriated or authorized from the source of funding indicated below to hospital care - Hawaii health systems corporation (HTH 210) the following sum, or so much thereof as may be necessary, to fund for fiscal year 2004-2005, the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees assigned to the Hawaii health systems corporation who are excluded from collective bargaining and who are under the same compensation plans as those officers and employees who belong to collective bargaining unit (10):

|               | <u>FY 2004-2005</u> |
|---------------|---------------------|
| General funds | \$13,572            |

SECTION 25. Funds appropriated or authorized by this part shall be allotted by the director of finance to the Hawaii health systems corporation and expended for the purposes of this part.

## PART XII

SECTION 26. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 27. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2005, shall lapse as of that date.

SECTION 28. This Act shall take effect on upon its approval.

(Approved April 22, 2005.)

## ACT 25

H.B. NO. 684

A Bill for an Act Making an Emergency Appropriation for the Department of Health Emergency Ambulance Service Contracts Collective Bargaining Costs.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. The purpose of this Act is to appropriate an additional \$2,120,801 in general funds for fiscal year 2004-2005 to pay for ambulance service contract collective bargaining costs. This emergency appropriation is necessary to comply with collective bargaining increases negotiated by ambulance service providers statewide. Included in this emergency appropriation is the sum of \$1,147,159 for the city and county of Honolulu, the sum of \$768,529 for the county of Hawaii, the sum of \$153,134 for American Medical Response-Maui, and the sum of \$51,979 for American Medical Response-Kauai.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,120,801 or so much thereof as may be necessary for fiscal year 2004-2005 to be used for the purposes of complying with collective bargaining increases negotiated by ambulance providers statewide.

The sum appropriated shall be expended by the department of health for the purpose of this Act.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 22, 2005.)

A Bill for an Act Relating to Child Support Enforcement.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 576D-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) ~~[In order to]~~ To carry out its responsibilities imposed under this chapter, the agency, through the offices of the corporation counsel, the county attorneys, or the attorney general, may commence or appear in any proceeding before any court or administrative agency for the purpose of establishing paternity for children born out of wedlock or for the purpose of obtaining, enforcing, or modifying an order of support on behalf of any dependent or any other person for whom the agency has a duty to obtain or enforce an order for support under this chapter. The agency may commence or appear in any action on its own behalf, on behalf of any dependent child or custodial parent, or on behalf of any other person for whom the agency has a duty to obtain or enforce an order of support under this chapter. The agency shall obtain or enforce a child support order for the following children:

- (1) A child on whose behalf public assistance payments have been or are being made;
- (2) A child on whose behalf foster care payments have been or are being made under Title IV-E; or
- (3) ~~[A child on whose behalf a custodial]~~ Any other child, if a parent, guardian, or [other] person having custody applies to the agency for assistance in obtaining or enforcing a child support order[;] with respect to the child, regardless of whether public assistance payments have been made on the child’s behalf.”

SECTION 2. Section 576D-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The agency and its agents shall keep records that may be necessary or proper in accordance with this chapter. All applications and records concerning any individual or case shall be confidential. The use or disclosure of information concerning any individual or case shall be limited to:

- (1) Persons duly authorized by the State or the United States in connection with their official duties, when their official duties are directly concerned with the administration and implementation of any child support enforcement plan or program approved by Title IV-A through D, or under ~~[Titles]~~ Title II, X, XIV, XVI, XIX, or XX of the Social Security Act, including but not limited to any legal counsel working on behalf of the agency;
- (2) Disclosure to the extent necessary to provide information to family support payors or payees or their authorized representatives regarding payments received by the agency and the status of their support accounts; provided that the information shall be disclosed to an authorized representative only if the request is accompanied by a written waiver of the payor or payee concerned;
- (3) Disclosure to consumer reporting agencies as provided in section 576D-6(a)(6);
- (4) Other agencies or persons connected with the administration of any other federal or federally assisted program ~~[which]~~ that provides assistance, in cash or in kind, or services, directly to individuals on the basis of need;

- (5) Employees acting within the scope and course of their employment with the department as may be approved by the agency;
- (6) Purposes directly connected with any investigation, enforcement, prosecution, or criminal [øf], civil, or administrative proceeding conducted in connection with the administration of any plan or program in paragraph (1); and
- (7) Disclosure to the family court as may be deemed necessary by the family court for any case pending before a court or for purposes of implementation of section 571-51.5.”

SECTION 3. Section 576D-14, Hawaii Revised Statutes, is amended to read as follows:

**“§576D-14 Implementation of income withholding.** (a) For cases being enforced under the Title IV-D state plan or for those parents applying to the agency for services, the income of an obligor who receives income on a periodic basis and who has a support obligation imposed by a support order issued or modified in the State before January 1, 1994, and issued or modified thereafter, if not otherwise subject to withholding, shall become subject to withholding as provided in subsection (b) if arrearages or delinquency occur, without the need for a judicial or administrative hearing. The income of an obligor shall become subject to withholding without regard to whether there are arrearages or delinquency upon the agency receiving a request for income withholding from the obligee and a determination made by the agency that income withholding is appropriate, or upon the agency receiving a request for income withholding from the obligor. The agency shall implement such withholding without the necessity of any application in the case of a child with respect to whom services are already being provided under Title IV-D and shall implement on the basis of an application for services under Title IV-D in the case of any other child on whose behalf a support order has been issued or modified. In either case, such withholding shall occur without the need for any amendment to the support order involved or for any further action by the court or other entity which issued such order.

(b) If the obligor who receives income on a periodic basis becomes delinquent in making payments under a support order in an amount at least equal to the support payable for one month, the agency shall issue an income withholding order that shall include an amount to be paid towards the delinquency. The income withholding order shall be in the standard format prescribed by Title IV-D of the Social Security Act, as amended by the child support enforcement agency. The order shall be served upon the employer by regular mail, by personal delivery, or by transmission to the employer through electronic means.

(c) Upon the agency’s receipt of an interstate income withholding request from another jurisdiction, the agency may issue an income withholding order to collect the support imposed upon the obligor by a support order issued or modified by the other state. The order shall include an amount adequate to ensure that past due payments and payments that will become due in the future under the terms of the support order will be paid.

(d) A copy of the order shall be filed in the office of the clerk of the circuit court in the circuit where the order was issued.

(e) Upon sending the order of income withholding to the employer, the agency shall send a notice of the withholding by regular mail to each obligor to whom subsections (b) and (c) apply. The notice shall inform the obligor:

- (1) That the withholding has commenced;
- (2) That the obligor may request a hearing in writing within fourteen days of the date of the notice;

- (3) That, unless the obligor files a written request for a hearing within fourteen days of the date of the notice, the money received from the income withholding will be distributed to the custodial parent or, in an interstate case, the obligee in the other jurisdiction, or in the case where the children are receiving public assistance, to the State;
- (4) That the only defense to income withholding is a mistake of fact; and
- (5) Of the information that was provided to the employer with respect to the employer's duties pursuant to section 576E-16.

(f) The agency may delay the distribution of collections toward arrearages or delinquency until the resolution of any requested hearing regarding the arrearages or delinquency.

(g) Upon timely receipt of a request for a hearing from the obligor pursuant to the notice provided under subsection (e), the agency shall refer the matter to the office and a hearing shall be conducted pursuant to chapters 91 and 576E.

(h) Upon receiving an order of income withholding from the agency, the employer is subject to the requirements of section 576E-16(b) through (h).

(i) In a case being enforced under the Title IV-D state plan or for those parents applying to the agency for services, the agency may:

~~(1) Enforce~~ enforce the existing order of support by sending to the employer by regular mail, by personal delivery, or by transmission through electronic means, a notice to withhold child support issued by the agency that reflects the terms and conditions specified in the order for support or income withholding order. Upon receiving a notice to withhold child support, the employer is subject to the requirements of section 576E-16(b) to (h) ~~;~~ and

~~(2) Terminate~~.

(j) The agency may terminate income withholding by sending a notice to the employer by regular mail, by personal delivery, or by transmission [by] through electronic means. The notice shall be issued upon determination by the agency that the obligor no longer owes the child support or that the obligation is being satisfied through withholding by another employer."

SECTION 4. Section 576E-11, Hawaii Revised Statutes, is amended to read as follows:

**“§576E-11 Administrative orders; required findings.** Every order entered pursuant to this chapter shall specify, where applicable, the following:

- (1) The amount of periodic support to be paid by a party with directions as to the manner of payment;
- (2) The amount of child support arrearage, if any, that has accrued under an existing court or administrative order;
- (3) The amount of child support owed for a period during which public assistance was provided to the child or children by the department of human services;
- (4) The amount of the periodic payment to be made in liquidation of child support arrearage, if any;
- (5) A statement that a party's taxes shall be set off against the amount of child support arrearage, if any;
- (6) The extent of the party's responsibility to provide medical insurance coverage [of] for the dependent child involved in the case, or otherwise to pay the reasonable and necessary medical expenses of the dependent child[;], and a statement that the party is required to keep the agency informed of whether the party has access to medical insurance coverage at a reasonable cost and, if so, the medical insurance policy information;



- (7) The name and birth date of the dependent child;
- (8) A statement that the property of the party is subject to collection action, including ~~[but not limited to,]~~ withholding of income, unemployment compensation, workers' compensation, and retirement benefits, seizure of property, disclosure of information relating to the party's debts to consumer credit reporting agencies, and federal and state tax refund setoff;
- (9) A statement that violations of the administrative order are punishable as contempt of court;
- (10) A statement notifying the parties of the right to judicial review of administrative orders, and the procedure for obtaining such review; ~~[and]~~
- (11) Identifying information for each party, including social security number, residential and mailing addresses, telephone number, driver's license number if different from the social security number, and name, address, and telephone number of the party's employer, unless there is a finding that such disclosure of information would unreasonably put at risk the health, safety, or liberty of a party or child[-]; and
- (12) A statement that both the obligor party and the obligee party are required to file with the state case registry, through the agency, upon entry of the support order and to update as appropriate, information on the identity and location of the party, including social security number, residential and mailing addresses, telephone number, driver's license number if different from social security number, and name, address, and telephone number of the party's employer."

SECTION 5. Section 576E-17, Hawaii Revised Statutes, is amended to read as follows:

**“§576E-17 Medical support enforcement.** (a) Where the responsible parent is ordered to provide medical insurance coverage for the dependent child, the standard notice for such medical support prescribed by Title IV-D of the Social Security Act, as amended by the ~~[child support enforcement]~~ agency, shall be issued. The agency shall forward a copy of the notice, by ~~[registered or certified mail or by personal service,]~~ regular mail, by personal delivery, or by transmission through electronic means, to the responsible parent's employer or union when the responsible parent fails to provide written proof to the agency, within thirty days of receipt of the order, that the insurance has been obtained ~~[or]~~, that application for insurance coverage has been made, or within two business days after the date of entry of a responsible parent in a Title IV-D case in the state directory of new hires, whichever shall first occur.

(b) Upon receipt of the copy of the notice, or upon request of the responsible parent pursuant to the order, the employer or union shall enroll the dependent child as a beneficiary in the group medical insurance plan and withhold any required premium from the responsible parent's income. If more than one plan is offered by the employer or union, the child shall be enrolled in the plan in which the responsible parent is enrolled or the least costly plan otherwise available to the responsible parent that is comparable to the plan in which the responsible parent is enrolled.

(c) A dependent child whom a responsible parent is required to cover as a beneficiary pursuant to this section is eligible for insurance coverage as a dependent of the responsible parent until the duty of support expires or until further court or administrative order. The insurance coverage shall not be terminated prior to the expiration of the duty of support or the entry of [such] an order relieving the responsible parent of the duty to provide insurance coverage[-], unless it is deter-

## ACT 27

mined by the agency that insurance coverage is being provided through appropriate alternative means.

(d) The signature of the custodial parent of the insured dependent child is a valid authorization to the insurer for purposes of processing an insurance reimbursement payment to the provider of medical services. When an order for dependent insurance coverage is in effect and the responsible parent's employment is terminated, or the insurance coverage is terminated, the insurer shall notify the agency within ten days of the termination date with notice of conversion privileges, if any.

(e) Notwithstanding any other law to the contrary, when an order for insurance coverage is in effect, the responsible parent's employer or union shall release to the agency, upon request, information on the dependent coverage available to the responsible parent, including the name of the insurer. The employer or union shall also provide any other information and perform all tasks as required by the notice issued pursuant to this section.

(f) Any responsible parent who fails to comply with an order requiring the maintenance of insurance coverage for the dependent child shall be liable for any medical expenses incurred by the obligee or the State after the effective date of the order.

(g) The agency may terminate the requirement for the responsible parent's employer or union to enroll the dependent child as a beneficiary in the group medical insurance plan and withhold any required premium from the responsible parent's income by sending a notice to the employer or union by regular mail, by personal delivery, or by transmission through electronic means. The notice shall be issued upon determination by the agency that the obligor no longer is required to provide medical insurance coverage or that such coverage is being provided by another employer."

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved April 25, 2005.)

## ACT 27

S.B. NO. 840

A Bill for an Act Relating to Income Tax Withholding.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to amend section 235-62, Hawaii Revised Statutes, to clarify the state withholding tax provisions for employers with state withholding tax liabilities exceeding \$40,000 annually.

SECTION 2. Section 235-62, Hawaii Revised Statutes, is amended to read as follows:

**"§235-62 Return and payment of withheld taxes.** (a) Every employer required by this chapter to withhold taxes on wages paid in any month shall make a return of such wages to the department of taxation on or before the fifteenth day of the calendar month following the month for which the taxes have been withheld; ~~provided that each employer required to make a return under this section whose liability for taxes withheld exceeds \$40,000 a year, shall pay the taxes withheld to~~

~~the department on or before the following Wednesday if wages were paid on the immediately preceding Wednesday, Thursday, or Friday; or on or before the following Friday if wages were paid on the immediately preceding Saturday, Sunday, Monday, or Tuesday.], except as provided in subsection (c).~~

~~(b) The return shall be in such form, including computer printouts [and the like,] or other electronic formats, and contain such information as may be prescribed by the director of taxation. The return shall be filed with [the collector of the taxation district in which the employer has the employer's principal place of business or with] the director at the first taxation district in Honolulu [if the employer has no place of business in the State].~~

~~(c) Every return required under this section shall be accompanied by a remission of the complete amount of tax withheld, as reported in the return[-]; provided that each employer whose liability for taxes withheld exceeds \$40,000 annually shall remit the complete amount of tax withheld on a semi-weekly schedule.~~

~~(d) If the director believes collection of the tax may be in jeopardy, the director may require any person required to make a return under this section to make such return and pay such tax at any time.~~

~~(e) The director may grant permission to employers, whose liability to pay over the taxes withheld as provided in this section shall not exceed \$5,000 a year, to make returns and payments of the taxes due on a quarterly basis during the calendar year, the returns and payments to be made on or before the fifteenth day of the calendar month after the close of each quarter, to wit, on or before April 15, July 15, October 15, and January 15. The director may grant permission to employers to make monthly payments based on an estimated quarterly liability; provided that the employer files a reconciliation return on or before the fifteenth day of the calendar month after the close of each quarter during the calendar year as provided by this section. The director, for good cause, may extend the time for making returns and payments, but not beyond the fifteenth day of the second month following the regular due date of the return. With respect to wages paid out of public moneys, the director, in the director's discretion, may prescribe special forms for, and different procedures and times for the filing of, the returns by employers paying the wages, or may waive the filing of any returns upon the conditions and subject to rules the director may prescribe.~~

~~(f) For purposes of this section, "semi-weekly schedule" means:~~

- ~~(1) On or before the following Wednesday if wages were paid on the immediately preceding Wednesday, Thursday, or Friday; or~~
- ~~(2) On or before the following Friday if wages were paid on the immediately preceding Saturday, Sunday, Monday, or Tuesday.~~

~~In addition to the allowances provided under section 231-21, each employer shall have at least three banking days following the close of the semi-weekly period by which to remit the taxes withheld as provided for in section 6302 of the Internal Revenue Code.~~

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 25, 2005.)

A Bill for an Act Relating to Motor Carriers.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 286-202.6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The marking shall:

- (1) Appear on both sides of the motor carrier vehicle;
- (2) Be in letters that contrast sharply in color with the background on which the letters are placed;
- (3) Be readily legible [~~with letters and figures not less than two and one-half inches in height with a one-quarter inch stroke or width;~~ during daylight hours, from a distance of fifty feet (15.24 meters) while the motor carrier vehicle is stationary; and
- (4) Be kept and maintained in a manner that retains the legibility required by paragraph (3).”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 25, 2005.)

A Bill for an Act Relating to Enforcement of Quarantine.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 325-9, Hawaii Revised Statutes, is amended to read as follows:

“**§325-9 Quarantine without removal; duty of police officers to assist in removals[.] and enforcement of quarantine.** If the department of health or its agent determines that the removal of the person infected or suspected of being infected would directly and seriously aggravate the disease so as to endanger the person’s life, the department, or its agent may make provision for the person, as directed in section 325-8, in the house in which the person may be; and, in such case, the department or its agent may cause the persons in the neighborhood to be removed, and may take such other measures as it judges necessary for the public health and safety. The department or its agent, in effecting any removal or quarantine under this or section 325-8, may require any sheriff, deputy sheriff, chief of police, or police officer to aid and assist it, and such force as is reasonably necessary to effect any such removal or quarantine may be used.

Every sheriff, deputy sheriff, chief of police, or police officer who is so required to aid and assist the department or its agent shall immediately aid and assist it.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 25, 2005.)

## ACT 30

H.B. NO. 1118

A Bill for an Act Relating to Nurses.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 457-8.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The department of commerce and consumer affairs shall establish a joint formulary advisory committee composed of:

- (1) Two persons licensed as advanced practice registered nurses and appointed by the board [~~of nursing~~];
- (2) Two persons licensed in medicine by the board of medical examiners and appointed by the board of medical examiners;
- (3) Three persons licensed as pharmacists and appointed by the board of pharmacy;
- (4) One representative of the John A. Burns school of medicine appointed by the dean of the University of Hawaii school of medicine; and
- (5) One representative from a school of nursing with an advanced practice registered nurse program.

The joint formulary advisory committee shall recommend the applicable formulary for persons recognized under this section. The board of medical examiners shall consider the recommendations of the joint formulary advisory committee in adopting the formulary. [~~A collegial~~] The appropriate working relationship with licensed physicians shall be reflected in rules adopted by the board [~~of nursing~~] in accordance with chapter 91.

The board [~~of nursing~~] shall establish nursing requirements for education, experience, and national certification pursuant to rules adopted in accordance with chapter 91.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 26, 2005.)

## ACT 31

S.B. NO. 1802

A Bill for an Act Relating to Captive Insurance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 431:19-101, Hawaii Revised Statutes, is amended by amending the definitions of “affiliated company”, “parent”, “pure captive insurance company”, and “pure nonprofit captive insurance company” to read as follows:

~~“[“Affiliated company”]~~ “Affiliated entity” means any company, person, or other legal entity in the same corporate system as a parent or a member organization by virtue of common ownership, control, operation, or management, or, in the case of a pure captive insurance company, that maintains a working relationship with, and whose business risks insured by the pure captive insurance company are similar or related to the business risks of, the parent insured by the pure captive insurance company.

“Parent” means a company, corporation, partnership, person, or ~~[individual]~~ other legal entity that directly or indirectly owns, controls, or holds with power to vote more than fifty per cent of the outstanding voting securities of a pure captive insurance company.

“Pure captive insurance company” means any company that only insures or reinsures risks of its parent and affiliated ~~[companies;]~~ entities.

“Pure nonprofit captive insurance company” means a pure captive insurance company formed without capital stock as a nonprofit corporation under chapter 414D, whose voting of membership interest is held by a parent organization formed under a nonprofit law or by such nonprofit parent and its affiliated ~~[companies;]~~ entities.”

SECTION 2. Section 431:19-101.3, Hawaii Revised Statutes, is amended to read as follows:

**“§431:19-101.3 Classes of captive insurance.** Each captive insurance company formed under this article shall be designated and licensed as one of the following classes of captive insurance companies:

- (1) A class 1 company shall be limited to a pure captive insurance company that only writes business as a reinsurer;
- (2) A class 2 company shall be limited to a pure captive insurance company that is not a class 1 company;
- (3) A class 3 company shall be any company formed under this article as an association captive insurance company or a risk retention captive insurance company;
- (4) A class 4 company shall be a leased capital facility formed under this article; and
- (5) A class 5 company shall be a reinsurance or excess insurance company formed under ~~[section 431:19-111.5;]~~ this article.”

SECTION 3. Section 431:19-102, Hawaii Revised Statutes, is amended:

1. By amending subsections (a) and (b) to read as follows:

“(a) Any captive insurance company, when permitted by its articles of association or articles of incorporation, may apply to the commissioner for a certificate of authority to do any and all insurance set forth in subsection (h); provided that:

- (1) No pure captive insurance company may insure any risks other than those of its parent and affiliated ~~[companies;]~~ entities;
- (2) No association captive insurance company may insure any risks other than those of the member organizations of its association and their affiliated ~~[companies;]~~ entities;
- (3) No captive insurance company may provide personal motor vehicle or homeowner’s insurance coverage or any component thereof, other than as employee benefits for the employees of a parent, association, or its members, and their respective affiliated ~~[companies;]~~ entities; or as reinsurance as may be allowed under this article; and

- (4) No captive insurance company may accept or cede insurance except as provided in section 431:19-111.
- (b) No captive insurance company shall do any insurance business in this State unless:

- (1) It first obtains from the commissioner a certificate of authority authorizing it to do insurance business in this State;
- (2) Its board of directors holds at least one meeting each year in this State;
- (3) It maintains its principal place of business and registered office in this State, except that a branch captive insurance company need only maintain the principal place of a business unit in this State; and
- (4) It designates a registered resident agent in accordance with chapter 414 or 414D, to accept service of process and to otherwise act on its behalf in this State. Whenever the registered resident agent cannot, with reasonable diligence, be found at the registered office of the captive insurance company, the commissioner shall be an agent of the captive insurance company upon whom any process, notice, or demand may be served[.] in accordance with section 431:2-206.''

2. By amending subsection (h) to read as follows:

''(h) A captive insurance company may engage in the business of any of the following types of insurance:

- (1) All casualty insurance;
- (2) Marine and transportation insurance;
- (3) Marine protection and indemnity insurance, which includes insurance against, or against legal liability of the insured for loss, damage, or expense arising out of or incident to, the ownership, operation, chartering, maintenance, use, repair, or construction of a vessel, craft, or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, death, or for loss of or damage to the property of another person;
- (4) Wet marine and transportation insurance, which is that part of marine and transportation insurance that includes only:
  - (A) Insurance upon vessels, crafts, hulls, and of interests therein or with relation thereto;
  - (B) Insurance of marine builder's risks, marine war risks and contracts, or marine protection and indemnity insurance;
  - (C) Insurance of freights and disbursements pertaining to a subject of insurance; and
  - (D) Insurance of personal property and interests therein, in the course of exportation from or importation into any country, and in the course of transportation coastwise or on inland waters, including transportation by land, water, or air from point of origin to final destination, with respect to, appertaining to, or in connection with any and all risks or perils of navigation, transit, or transportation, and while being prepared for and while awaiting shipment, and during delays, storage, transshipment, or reshipment incident thereto;
- (5) Property insurance;
- (6) Surety insurance;
- (7) Title insurance;
- (8) Credit life insurance and credit disability insurance offered as part of, or relating directly to the business or operations of its parent or affiliated [~~companies;~~] entities; and
- (9) Other lines of insurance that the commissioner may allow.''

SECTION 4. Section 431:19-106, Hawaii Revised Statutes, is amended to read as follows:

**“§431:19-106 Formation of captive insurance companies in this State.**

(a) A pure captive insurance company shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.

(b) A captive insurance company, which is other than a pure captive insurance company, may be:

- (1) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders;
- (2) Incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organization of its association; or
- (3) Organized as a reciprocal insurer, for other than credit life and credit disability insurance and group term life insurance, without capital stock, whose affairs shall be coordinated through an attorney-in-fact as provided in the power of attorney or other agreement given to the attorney-in-fact by the subscribers.

(c) A captive insurance company other than one that is formed as a reciprocal insurer shall have no fewer than three incorporators of whom no fewer than two shall be residents of this State.

(d) Before the articles of incorporation are transmitted to the department of commerce and consumer affairs, the incorporators shall petition the commissioner to issue a certificate setting forth the commissioner’s finding that the establishment and maintenance of the proposed corporation will promote the general good of the State. In arriving at such a finding, the commissioner shall consider:

- (1) The character, reputation, financial standing, and purposes of the incorporators;
- (2) The character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and
- (3) Other aspects as the commissioner deems advisable.

(e) The articles of incorporation, certificate, and the organization fee shall be transmitted to the department of commerce and consumer affairs, which shall record both the articles of incorporation and the certificate.

(f) The capital stock of a captive insurance company incorporated as a stock insurer shall be issued at not less than par value.

(g) At least one of the members of the board of directors of a captive insurance company incorporated in this State shall be a resident of this State.

(h) Captive insurance companies formed under this article, except for pure nonprofit captive insurance companies, shall have the privileges and be subject to the general corporation law as well as this article. In the event of conflict between the general corporation law and this article, the latter shall control.

(i) Pure nonprofit captive insurance companies formed under this article shall have the privileges and be subject to the nonprofit corporation law as well as this article. In the event of conflict between the nonprofit corporation law and this article, the latter shall control.

~~[(j) The articles of incorporation of a risk retention captive insurance company incorporated as a stock insurer shall provide that no stockholder shall own more than ten per cent of the risk retention captive insurance company’s outstanding stock; provided that as an alternative, the commissioner, if the commissioner deems it in the best interest of the risk retention captive, the policyholders, and the public, may permit the articles of incorporation to state that no stockholder shall vote more than ten per cent of the outstanding stock.]”~~



SECTION 5. Section 431:19-107, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The commissioner may suspend or revoke the certificate of authority or fine any captive insurer that fails to file any of the documents or reports required by ~~[subsections (a) and (b)].~~ this section. The fine shall be not more than \$500 per day past the due date.”

SECTION 6. Section 431:19-108, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The commissioner or any examiner authorized by the commissioner may conduct an examination of any captive insurance company as often as the commissioner deems appropriate; provided that an examination shall be conducted at least once every three years. The commissioner, upon application by a captive insurance company, may allow an examination to be conducted every five years; provided that the commissioner shall have completed at least one triennial examination of the company. The commissioner or any authorized examiner shall thoroughly inspect and examine the captive insurance company’s affairs to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with this article.”

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved April 26, 2005.)

## ACT 32

H.B. NO. 582

A Bill for an Act Relating to Missing Child Center-Hawaii.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 28, Hawaii Revised Statutes, is amended as follows:

1. By amending the title of part VIII to read:

“~~[PART VIII.]<sup>1</sup> HAWAII STATE CLEARINGHOUSE FOR MISSING CHILDREN]~~ MISSING CHILD CENTER-HAWAII”

2. By amending the title and subsections (a) and (b) of section 28-121 to read:

“~~[§28-121] Hawaii state clearinghouse for missing children;~~ Missing child center-Hawaii; programs. (a) There is established within the department of the attorney general a program to be known as the missing child center-Hawaii, formerly known as the Hawaii state clearinghouse for missing children, to assist in the implementation of federal and state laws relating to missing children.

(b) The ~~[Hawaii state clearinghouse for missing children]~~ missing child center-Hawaii shall include programs to coordinate the efforts of state and county agencies with those of federal agencies in locating, recovering, and protecting missing children and to promote community awareness of the problem of missing children.”

## ACT 33

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 27, 2005.)

### Note

1. So in original.

## ACT 33

H.B. NO. 437

A Bill for an Act Relating to Driving Under the Influence of an Intoxicant.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 291E-61,<sup>1</sup> Hawaii Revised Statutes, is amended to read as follows:

“(b) A person committing the offense of operating a vehicle under the influence of an intoxicant shall be sentenced as follows without possibility of probation or suspension of sentence:

- (1) For the first offense, or any offense not preceded within a five-year period by a conviction for an offense under this section or section 291E-4(a):
  - (A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable program deemed appropriate by the court;
  - (B) Ninety-day prompt suspension of license and privilege to operate a vehicle during the suspension period, or the court may impose, in lieu of the ninety-day prompt suspension of license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a vehicle and, for the remainder of the ninety-day period, a restriction on the license that allows the person to drive for limited work-related purposes and to participate in substance abuse treatment programs;
  - (C) Any one or more of the following:
    - (i) Seventy-two hours of community service work;
    - (ii) Not less than forty-eight hours and not more than five days of imprisonment; or
    - (iii) A fine of not less than \$150 but not more than \$1,000; and
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund;
- (2) For an offense that occurs within five years of a prior conviction for an offense under this section or section 291E-4(a) by:
  - (A) Prompt suspension of license and privilege to operate a vehicle for a period of one year with an absolute prohibition from operating a vehicle during the suspension period;
  - (B) Either one of the following:
    - (i) Not less than two hundred forty hours of community service work; or
    - (ii) Not less than five days but not more than fourteen days of imprisonment of which at least forty-eight hours shall be served consecutively;
  - (C) A fine of not less than \$500 but not more than \$1,500; and
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund;

- (3) For an offense that occurs within five years of two prior convictions for offenses under this section or section 291E-4(a):
- (A) A fine of not less than \$500 but not more than \$2,500;
  - (B) Revocation of license and privilege to operate a vehicle for a period not less than one year but not more than five years;
  - (C) Not less than ten days but not more than thirty days imprisonment of which at least forty-eight hours shall be served consecutively; and
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
- (4) Any person eighteen years of age or older who is convicted under this section and who operated a vehicle with a passenger, in or on the vehicle, who was younger than fifteen years of age, shall be sentenced to an additional mandatory fine of \$500 and an additional mandatory term of imprisonment of forty-eight hours; provided that the total term of imprisonment for a person convicted under this paragraph ~~and paragraph (1), (2), or (3)]~~ shall not exceed ~~[thirty days.]~~ the maximum term of imprisonment provided in paragraphs (1), (2), or (3)."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 27, 2005.)

**Note**

1. So in original.

**ACT 34**

H.B. NO. 1222

A Bill for an Act Relating to Public Employees.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 76-14, Hawaii Revised Statutes, is amended to read as follows:

**“§76-14 Merit appeals board; duties, and jurisdiction.** (a) The merit appeals board of each jurisdiction shall decide appeals from any action under this chapter taken by the chief executive, the director, an appointing authority, or a designee acting on behalf of one of these individuals, relating to:

- (1) Recruitment and examination;
- (2) Classification and reclassification of a particular position~~[:]~~, including denial or loss of promotional opportunity or demotion due to reclassification of positions in a reorganization;
- (3) Initial pricing of classes; and
- (4) Other employment actions under this chapter, including disciplinary actions and adverse actions for failure to meet performance requirements, taken against civil service employees who are excluded from collective bargaining coverage under section 89-6.

(b) Any person suffering legal wrong by an action under subsection (a)(1) or aggrieved by such action shall be entitled to appeal to the merit appeals board. Any employee covered by chapter 76 suffering legal wrong by an action under subsection

## ACT 35

(a)(2) or (3) shall be entitled to appeal to the merit appeals board. Only employees covered by chapter 76, who are excluded from collective bargaining, suffering legal wrong by an action under subsection (a)(4) shall be entitled to appeal to the merit appeals board. Appeals under this section shall be filed within time limits and in the manner provided by rules of the merit appeals board.

(c) The rules adopted by the merit appeals board shall provide for the following:

- (1) The merit appeals board shall not act on an appeal, but shall defer to other authority, if the action complained of constitutes a prohibited act that is subject to the jurisdiction of another appellate body or administrative agency or the grievance procedure under a collective bargaining agreement;
- (2) The merit appeals board shall not proceed on an appeal or shall hold proceedings in abeyance if there is any controversy regarding its authority to hear the appeal until the controversy is resolved by the Hawaii labor relations board;
- (3) The merit appeals board shall prescribe time limits for filing an appeal that require exhaustion of all internal complaint procedures, including administrative review and departmental complaint procedures, before an appeal is filed; and
- (4) The merit appeals board shall use the conditions listed in section 76-41(b) in reaching a decision on whether actions taken by the appointing authority based on a failure by the employee to meet the performance requirements of the employee's position is with or without merit.

(d) Notwithstanding the provisions of this section, the merit appeals board shall have the authority to hear and decide appeals pending before the state civil service commission as of June 30, 2002, in accordance with the jurisdictional requirements and procedures applicable to the state civil service commission as of June 30, 2002.

(e) This section shall be construed liberally to determine whether the appeal falls within the jurisdiction of the merit appeals board."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 28, 2005.)

## ACT 35

H.B. NO. 1305

A Bill for an Act Relating to Equal Pay.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to prohibit employers from discriminating on the basis of gender by paying wages to an employee at a rate less than the rate at which the employer pays wages to another employee of the opposite sex for equal work, except when the difference in wages is based on a seniority system, a merit system, a system that measures earnings by quantity or quality of production, a bona fide occupational qualification, or a differential based on any permissible factor other than sex.

It is the intent of the legislature that nothing in this Act shall be construed to require an employer to pay the same wages to employees who work in different locations, even though the employees perform jobs that require equal skill, effort, and responsibility and are performed under similar working conditions, provided that any disparity in wages is not based on gender. It is also not the intent of the legislature to affect or diminish the existing, broader protections provided under part I of chapter 378, Hawaii Revised Statutes.

SECTION 2. Chapter 378, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

“§378- **Equal pay; sex discrimination.** No employer shall discriminate between employees because of sex, by paying wages to employees in an establishment at a rate less than the rate at which the employer pays wages to employees of the opposite sex in the establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and that are performed under similar working conditions. Payment differentials resulting from:

- (1) A seniority system;
- (2) A merit system;
- (3) A system that measures earnings by quantity or quality of production;
- (4) A bona fide occupational qualification; or
- (5) A differential based on any other permissible factor other than sex

do not violate this section.”

SECTION 3. There is established a five-year pay equity task force to be conducted under the auspices of the office of the governor, beginning in fiscal year 2006-2007, and continuing through fiscal year 2010-2011. The task force shall consist of the following:

- (1) One representative from each of the unions serving as exclusive representative for civil service workers;
- (2) The director of labor and industrial relations or the director’s designee;
- (3) Four representatives of public employers appointed by the governor;
- (4) The chairperson of the Hawaii state commission on the status of women or the chairperson’s designee; and
- (5) Three individuals appointed by the governor who represent the public at large.

The office of the governor shall convene the first meeting at which the members shall elect a chairperson. The purpose of the task force shall be to determine the current extent and trend of gender-based pay inequities in the State of Hawaii. The task force shall review the 1995 “Study of Wage Equity in Public Employee Bargaining Units 1 and 10”; the 1987 study entitled “A Job Evaluation Study of Selected Job Classes of the State and Counties of Hawaii”; and any other data and information pertinent to the accomplishment of its purpose. The task force shall review the materials and, as appropriate, develop recommendations for submission to the legislature regarding the need for funding or specific actions to correct any gender-based pay inequities that are discovered. In addition, the task force shall provide the legislature with an annual report documenting its progress.

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. New statutory material is underscored.<sup>1</sup>

## ACT 36

SECTION 6. This Act shall take effect upon its approval; provided that section 3 of this Act shall be repealed on June 30, 2011.

(Became law on April 28, 2005, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 36

S.B. NO. 1864

A Bill for an Act Making an Emergency Appropriation Out of the Judiciary Computer System Special Fund.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with article VII, section 9 of the Constitution of the State of Hawaii.

SECTION 2. The purpose of this Act is to increase the appropriation out of the judiciary computer system special fund for fiscal year 2004-2005 by \$1,500,000, in order to allow the judiciary to pay for unanticipated hardware and infrastructure expenses for the judiciary information management system project, as well as unanticipated expenses involved in converting data from the antiquated TRAVIS case management system to the judiciary information management system.

Without this appropriation, the judiciary information management system traffic module would be delayed causing several negative ramifications for the judiciary and other state and county agencies, including the following:

- (1) The judiciary would incur delay costs under its vendor contract;
- (2) The current infrastructure would be inadequate to support all the users in the judiciary and external agencies requiring access to the system; and
- (3) Federal funding would be jeopardized for the planned judiciary, city and county of Honolulu division of motor vehicles, and state department of transportation's joint compliance with the federal requirement to capture information about commercial drivers licenses beginning September, 2005, which would have been fulfilled through the judiciary information management system traffic module.

SECTION 3. There is appropriated out of the judiciary computer system special fund for fiscal year 2004-2005, the sum of \$1,500,000, or so much thereof as may be necessary, to be used to purchase additional hardware, upgrade and replace the judiciary's network infrastructure, pay for the unanticipated expenses involved in converting data from the judiciary's antiquated TRAVIS case management system to the judiciary information management system, and pay for other expenses necessary to ensure the success of the judiciary information management system project.

The sum appropriated under this Act shall be in addition to the sums appropriated under Act 120, Session Laws of Hawaii 2003, as amended by Act 38, Session Laws of Hawaii 2004.

The sum appropriated shall be expended by the judiciary for the purposes of this Act.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 29, 2005.)

## ACT 37

S.B. NO. 1713

A Bill for an Act Relating to Kalaupapa.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 326, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§326- Liberty, autonomy, and dignity of patient residents.** (a) In recognition of the disruptions and hardships experienced over the course of their lives by former Hansen’s disease patients residing at Kalaupapa, the legislature declares its intent to ensure that all residents at Kalaupapa are treated with dignity, respect, courtesy, and sensitivity and that the protections extended by this chapter to the patient residents at Kalaupapa are honored and upheld by the department of health to the extent possible within their purview.

(b) Notwithstanding any other law to the contrary, the department of health shall promote and protect the personal liberty, autonomy, and dignity of all patient residents at Kalaupapa.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved April 29, 2005.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 38

S.B. NO. 1140

A Bill for an Act Relating to Financial Service Loan Companies.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 412:9-200, Hawaii Revised Statutes, is amended to read as follows:

**“§412:9-200 General powers.** Except as expressly prohibited or limited by this chapter, a financial services loan company shall have the power to make loans where the interest charged, contracted for, or received is in excess of rates permitted by law, other than this article, and to engage in other activities that are usual or incidental to the business for which it is licensed, and shall have all rights, powers, and privileges of a corporation organized under the laws of this State, including but not limited to, the power to:

- (1) Make loans and extensions of credit of any kind, whether unsecured or secured by real or personal property of any kind or description;
- (2) Borrow money from any source within or without this State;

- (3) Charge or retain a fee for the originating, selling, brokering, or servicing of loans and extensions of credit;
- (4) Discount, purchase, or acquire loans, including but not limited to notes, credit sales contracts, mortgage loans, or other instruments;
- (5) Become the legal or beneficial owner of tangible personal property and fixtures and such other real property interests as shall be incidental thereto, to lease such property, to obtain an assignment of a lessor's interest in a lease of the property, and to incur obligations incidental to the financial services loan company's position as the legal or beneficial owner and the lessor of the property;
- (6) Sell or refer credit related insurance products, and collect premiums or fees for the sale or referral thereof, including, but not limited to, credit life insurance, credit disability insurance, accident and health or sickness insurance, involuntary unemployment insurance, personal property insurance, and mortgage protection insurance; ~~and~~
- (7) Make investments as permitted under this article[-]; and
- (8) Charge to a borrower a returned check fee if a check that has been tendered by the borrower in payment on account of a loan is returned unpaid; provided that:
  - (A) The fee shall not exceed \$20;
  - (B) The fee shall be imposed under a separate billing, and shall not be added to a borrower's outstanding loan balance nor deducted from a loan payment; and
  - (C) A failure to pay the fee shall not constitute a default under any outstanding loan agreement between the borrower and the financial services loan company.'

SECTION 2. Section 412:9-304, Hawaii Revised Statutes, is amended to read as follows:

“**§412:9-304 Consumer loan charges.** Unless specifically authorized in this article or by rule adopted by the commissioner, a financial services loan company shall only have the right to charge, contract for, and receive in advance or otherwise, the following charges in addition to the interest permitted in section 412:9-302 for a consumer loan made under this article:

- (1) Late charges under the consumer loan on any delinquent installment, or portion of the delinquent installment where there has been no extension or deferment. Delinquency occurs when the installment or payment is not paid on the due date. Late charges shall not be collected more than once for the same delinquent installment. Late charges on any consumer loan shall not exceed five per cent of the delinquent installment, and late charges shall not be assessed on any consumer loan after acceleration of the maturity of the consumer loan;
- (2) A prepayment penalty as provided in the note or other form of contract signed by the borrower on any amount that is voluntarily prepaid; provided that:
  - (A) The prepayment penalty on any consumer loan with a term of five years or more that is primarily secured by an interest in real property and in which the interest rate is computed under section 412:9-301(2) and which is prepaid within five years of the date of the loan shall be computed on the amount prepaid in excess of twenty per cent of the original principal amount of the loan in any twelve-month period measured from the date of the loan or from any anniversary of the loan date. The prepayment penalty may be



- charged only on amounts in excess of the twenty per cent amount in each twelve-month period in such five-year period and shall not exceed six months of interest at the maximum interest rate permissible for the consumer loan by law on the amount prepaid;
- (B) The prepayment penalty shall not be charged on a consumer loan that is a variable rate or open-end loan, on a precomputed loan on which interest is computed under section 412:9-301(1), or on loans that are not secured by real estate; and
  - (C) The prepayment penalty shall not be charged on any amount that is paid because of the exercise of any acceleration provision by the financial services loan company;
- (3) Extension or deferment charges on any payment on account of the principal balance of a loan, or a portion thereof, that is due on a particular date, but is extended or deferred to a later date by mutual agreement. The charges shall be based upon the amount so extended or deferred at interest not exceeding that permitted upon the original loan under section 412:9-302, for the actual period of the extension or deferment. The extension or deferment charges may be collected either in advance at the commencement of the period of extension or deferment or otherwise as agreed. The term and conditions of the extension or deferment, including the amount of the consumer loan so extended or deferred, and the period of, and the charge for the extension or deferment shall be set forth in writing and signed by the borrower with one copy given to the borrower;
- (4) Nonrefundable discount, points, loan fees, and loan origination charges[;]; provided that:
- (A) Discount, points, loan fees, and loan origination charges shall not be charged on precomputed loans on which interest is computed under section 412:9-301(1); and
  - (B) The nonrefundable discount, points, loan fees, and loan origination charges shall be permitted on consumer loans on which interest is computed under section 412:9-301(2) if the consumer loan is secured by an interest in real property or if the consumer loan is made to a lessee of land subject to the Hawaiian Homes Commission Act and the loan, but for the provisions of the Act, would be secured by a mortgage on the leasehold interest. Provided further that, except for open-end loans, the nonrefundable discount, points, loan fees, and origination charges shall be included as interest to determine compliance of the loan with the interest rate limits under section 412:9-302(b)(2) when the consumer loan is made.

The nonrefundable discount, points, loan fees, and loan origination charges shall be fully earned on the date the loan commitment agreement or other form of contract is executed and the commitment fee paid, or on the date the consumer loan is made, and shall not be subject to refund on prepayment of the consumer loan;

- (5) Fees, charges, and expenses reasonably related to the consumer loan [transaction] that are retained by the financial services loan company; provided that the fees [~~are bona fide and reasonable and not unfair or deceptive. These~~], charges, and expenses are charged only on consumer loans that are secured by an interest in real property; and provided further that the total dollar amount of the fees, charges, and expenses, whether or not itemized, shall not exceed one per cent of the principal amount of the loan. The fees [~~are~~], charges, and expenses may include

but are not limited to notary fees, appraisal fees, appraisal review fees, and [a fee] fees for the development, processing, and preparation of loan documents, including deeds, promissory notes, mortgages, and reconveyance, settlement, and similar documents; ~~provided that fees are charged only on consumer loans which are secured by an interest in real property. The commissioner may adopt, pursuant to rule, any fees in addition to those enumerated in this paragraph;~~

- (6) Fees, charges, and expenses reasonably related to the consumer loan ~~[transaction]~~ that are actually paid to third parties, affiliates, or subsidiaries for services actually rendered, no portion of which ~~[inures to the benefit of]~~ is rebated, refunded, or paid directly or indirectly to the financial services loan company[;] by the third parties, affiliates, or subsidiaries. The fees, charges, and expenses may include[;] but are not limited to[;] charges for credit reports, actual taxes, and fees charged by a governmental agency for recording, filing, or entering of record any security agreements or instruments, including the partial or complete release of such security agreements or instruments, insurance premiums of the kind and to the extent described in paragraph (2) of subsection (e) of Section 226.4 of Regulation Z of the Board of Governors of the Federal Reserve System[; ~~provided]~~ and to the extent that the insurance premium ~~[shall]~~ does not exceed \$20, appraisal fees, appraisal review fees, title report or title insurance fees, mortgage reserve funds to be used for payment of taxes, insurance, lease rent and condominium assessments, real property tax services fees, wire transfer fees, and attorney’s fees and expenses for documentation of the consumer loan or for the collection of any consumer loan in default.’

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2005.

(Approved April 29, 2005.)

ACT 39

S.B. NO. 608

A Bill for an Act Relating to Duty of Physician, Surgeon, Hospital, Clinic, Etc., to Report Wounds.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 453-14, Hawaii Revised Statutes, is amended to read as follows:

**“§453-14 Duty of physician, surgeon, hospital, clinic, etc., to report wounds.** (a) Every physician and surgeon attending or treating a case of knife wound, bullet wound, gunshot wound, powder burn, or any injury that would seriously maim, produce death, or has rendered the injured person unconscious, caused by the use of violence or sustained in a suspicious or unusual manner[;] or[;]

in motor vehicle collisions resulting in serious injury or death, or, whenever [such] the case is treated in a hospital, clinic, or other institution, the manager, superintendent, or person in charge thereof, shall report [such] the case or provide requested information to the chief of police of the county within which the person was attended or treated, giving the name of the injured person, description of the nature, type, and extent of the injury, together with other pertinent information [~~which~~] that may be of use to the chief of police. As used herein, the term "chief of police" means the chief of police of each county and any of the chief's authorized subordinates.

(b) This section shall not apply to [such] wounds, burns, or injuries received by a member of the armed forces of the United States or of the State while engaged in the actual performance of duty.

(c) Any person who fails to make the report called for herein within twenty-four hours after [such] the attendance or treatment shall be fined not less than \$50 nor more than \$500."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 2, 2005.)

## ACT 40

S.B. NO. 1235

A Bill for an Act Relating to Elderly Care.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the chronically ill and disabled elderly often need a variety of long-term care services, including medical care, rehabilitation therapies, psycho-social treatment, transportation, meals, personal care, and grooming services. In addition, frail elderly and their families are often caught in a labyrinth of application forms, endless phone calls, and inquiries to obtain appropriate health and social services. Dealing with multiple agencies and deciphering their costs and eligibility requirements are formidable tasks that add to family stress and frustration.

A fragmented long-term care system and the limited scope of services result in the frail individual's settling for services that can only be obtained in the immediate community or being prematurely placed in an institution such as a nursing home. This situation is not only costly and insufficient but also undesirable. Moreover, nursing home placements are expensive due to the high costs of constructing and operating such facilities.

The 1991 legislature recognized the need for an alternative community-based program that is comprehensive, prevents institutionalization, and contains long-term care costs. Specifically, the legislature appropriated over \$2,000,000 for a demonstration project at Maluhia hospital known as the program for all-inclusive care for the elderly (PACE).

The legislature finds that PACE provides a complete package of services that enhances the quality of life for the elderly participants. In addition, PACE addresses the problems of fragmented and costly long-term care by meeting the needs of Hawaii's families who are struggling to maintain their frail elderly in their own homes to avoid institutionalization. Another benefit to families, as well as the State,

## ACT 41

is that PACE costs less than what medicare, medicaid, and private individuals currently pay for long-term care.

The PACE demonstration project at Maluhia hospital allows the viability of a cost-effective statewide program offering quality community-based, long-term care programs to be evaluated.

The purpose of this Act is to extend the PACE demonstration project in the department of health's Maluhia long-term care health center.

SECTION 2. Act 211, Session Laws of Hawaii 1992, as amended by Act 338, Session Laws of Hawaii 1997, and Act 57, Session Laws of Hawaii 2002, is amended by amending section 8 to read as follows:

“SECTION 8. This Act shall take effect on July 1, 1992, and shall be repealed on June 30, [2005-] 2007.”

SECTION 3. Act 338, Session Laws of Hawaii 1997, as amended by Act 57, Session Laws of Hawaii 2002, is amended by amending subsection (b) of section 3 to read as follows:

“(b) The PACE program shall address these issues and report its findings to the legislature no later than twenty days before the convening of the regular session of 1998, 1999, 2000, 2001, 2002, 2003, 2004, [and] 2005[~~]~~, 2006, and 2007.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on June 29, 2005.

(Approved May 3, 2005.)

## ACT 41

H.B. NO. 555

A Bill for an Act Making an Emergency Appropriation for Electricity Payments Statewide.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. The purpose of this Act is to make an emergency appropriation to address a \$3,000,000 deficit in electricity payments for the department of accounting and general services managed facilities statewide. Since local utility companies are dependent upon oil as the primary source of fuel, the steady rise in world oil prices has directly contributed to this shortfall. For a twelve-month period from November 2003 to October 2004, oil prices increased 83 percent, from \$30 to \$55 per barrel, while kilo watt per hour consumption has remained flat. Based on a combination of actual bills paid and projected cost, the shortfall for the current fiscal year 2004-2005 is as follows: Oahu, \$2,091,428; Hawaii, \$210,821; Maui, \$246,952; and Kauai \$450,799. Without an emergency appropriation, the program will be unable to pay a portion of its March 2005 electricity bill, and must defer payment on all of its April, May, and June bills. In addition, failure to pay utility companies on a timely basis will result in late payment fees and negatively impact cash flow of these companies.

**SECTION 3.** There is appropriated out of the state general fund the sum of \$3,000,000 or so much thereof as may be necessary, for fiscal year 2004-2005 for the purpose of paying electricity bills. The sum appropriated shall be expended by the department of accounting and general services for the purpose of this Act.

**SECTION 4.** This Act shall take effect upon its approval.

(Approved May 3, 2005.)

**ACT 42**

H.B. NO. 556

A Bill for an Act Making an Emergency Appropriation for Wireless Enhanced 911.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

**SECTION 2.** The purpose of this Act is to make an emergency appropriation and establish the spending ceiling of the wireless enhanced 911 fund, which is a special fund created outside of the state treasury for \$3,050,000. Act 159, Session Laws of Hawaii 2004, which created the special fund, did not provide an appropriation to allow any expenditures from the fund. The expenditures of the fund provide reimbursement to the public safety answering points and wireless providers for improvements to the 911 emergency phone system and wireless phone systems to enable public safety answering points to receive location information on wireless 911 calls. The appropriation is also needed to fund the payment of a contractor to process the receipts from wireless providers and disbursements to wireless providers, and public safety answering points for improvements to the 911 emergency phone system and wireless network.

**SECTION 3.** There is appropriated out of the wireless enhanced 911 fund, the sum of \$3,050,000, or so much thereof as may be necessary, for fiscal year 2004-2005, for the purpose of reimbursing public safety answering points and wireless providers for technical improvements and for the operating costs of the fund. The sum appropriated shall be expended by the department of accounting and general services for the purposes of this Act.

**SECTION 4.** This Act shall take effect upon its approval.

(Approved May 3, 2005.)

**ACT 43**

H.B. NO. 683

A Bill for an Act Making an Emergency Appropriation to the Department of Health for the Adult Mental Health Division.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** This Act is recommended by the governor for immediate passage in accordance with article VII, section 9, of the Constitution of the State of Hawaii.

## ACT 44

SECTION 2. Although funds were appropriated to the department of health for adult mental health services for the fiscal period beginning July 1, 2004, and ending June 30, 2005, a critical funding emergency now exists. The program will expend all appropriated funds before the end of the current fiscal year, and the department will be unable to meet its fiscal obligation to provide services to certain adults with severe mental illness. The primary reason for this financial situation is the need to continue existing services and implement additional services and activities to comply with the requirements of the settlement agreement and subsequent orders in *United States v. State of Hawaii, et al.* Civil Number 91-00137 (DAE/KSC).

The purpose of this Act is to appropriate or authorize moneys to prevent the reduction or discontinuance of services to patients at Hawaii state hospital and services for the target population as defined and required by the federal court-ordered community plan for mental health services.

SECTION 3. In accordance with article VII, section 9, of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that appropriations contained in this Act will cause the State general fund expenditure ceiling for fiscal year 2004-2005 to be exceeded by \$15,072,175. To partially account for this, the mental health and substance abuse special fund expenditure ceiling is increased by the amount of \$3,500,000. This amount, or so much thereof as may be necessary, for fiscal year 2004-2005 is to be used for services and activities to patients of Hawaii state hospital, to continue and implement services for the target population as defined and required by the federal court-ordered community plan and to serve an increasing number of persons eligible for mental health services.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$3,930,000 or so much thereof as may be necessary for fiscal year 2004-2005 to be used for services and activities to patients of Hawaii state hospital, to continue and implement services for the target population as defined and required by the federal court-ordered community plan and to serve an increasing number of persons eligible for mental health services.

The sums appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 6, 2005.)

## ACT 44

S.B. NO. 667

A Bill for an Act Making an Emergency Appropriation for Flood Losses.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. The purpose of this Act is to make an emergency appropriation for the losses incurred by the University of Hawaii as a result of the October 30, 2004, flood by:

- (1) Increasing the budgetary spending limit of the state risk management revolving fund by \$25,000,000 to \$35,450,000 to account for the infusion of funds from the State's flood insurance policy;
- (2) Appropriating \$25,000,000 from the state risk management revolving fund for deposit into the general fund; and
- (3) Appropriating \$22,000,000 from the general fund for fiscal year 2004-2005, to pay for losses that would exceed the current spending ceiling and appropriation.

The funds shall be expended for the purpose of cleaning, repairing, or replacing damaged or destroyed university property and for reimbursing the University of Hawaii for funds that have already been spent cleaning, repairing, and replacing damaged or destroyed university property.

SECTION 3. There is appropriated out of the state risk management revolving fund the sum of \$25,000,000 or so much thereof as may be necessary for fiscal year 2004-2005 to be deposited into the general fund for the purpose of cleaning, repairing, or replacing damaged or destroyed University of Hawaii property as a result of the October 30, 2004, flood.

The sum appropriated shall be expended by the department of accounting and general services for the purposes of this section.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$22,000,000 or so much thereof as may be necessary for fiscal year 2004-2005 for the purpose of cleaning, repairing, or replacing damaged or destroyed University of Hawaii property and for reimbursing the University of Hawaii for funds that have already been spent cleaning, repairing, and replacing damaged or destroyed university property as a result of the October 30, 2004, flood.

The sum appropriated shall be expended by the University of Hawaii for the purposes of this section.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 6, 2005.)

## ACT 45

S.B. NO. 708

A Bill for an Act Relating to Chapter 846E.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 846E, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

**“§846E-A Termination of registration requirements.** (a) A covered offender whose most serious covered offense is a class A felony or its non-Hawaii equivalent, who has substantially complied with the registration requirements of this chapter for the previous twenty-five years, who is not a sexually violent predator, who is not an aggravated sex offender, and who is not a repeat covered offender, may petition the court, in a civil proceeding, for termination of registration requirements on the ground that registration is no longer necessary for the protection of the public.

(b) A covered offender whose most serious covered offense is a class B felony or its non-Hawaii equivalent, who has substantially complied with the

registration requirements of this chapter for the previous fifteen years, who is not a sexually violent predator, who is not an aggravated sex offender, and who is not a repeat covered offender, may petition the court, in a civil proceeding, for termination of registration requirements on the ground that registration is no longer necessary for the protection of the public.

(c) A covered offender whose most serious covered offense is a class C felony or its non-Hawaii equivalent, or a misdemeanor or its non-Hawaii equivalent, who has substantially complied with the registration requirements of this chapter for the previous ten years, who is not a sexually violent predator, who is not an aggravated sex offender, and who is not a repeat covered offender, may petition the court, in a civil proceeding, for termination of registration requirements on the ground that registration is no longer necessary for the protection of the public.

(d) A denial by the court for relief pursuant to a petition under this section shall preclude the filing of another petition for five years from the date of the last denial.

**§846E-B Presumptions; civil proceeding.** (a) For any civil proceeding required or permitted by this chapter, the following presumptions shall apply:

- (1) For a covered offender who is a sexually violent predator, an aggravated sex offender, or a repeat covered offender, there shall be a presumption that the covered offender's registration requirement and public access shall continue;
- (2) For a covered offender convicted of a class C felony or a misdemeanor who is not a sexually violent predator, an aggravated sex offender, or a repeat covered offender, there shall be a presumption that the covered offender's registration requirement and public access shall end; and
- (3) For all other covered offenders, there shall be no presumption concerning the covered offender's registration requirement and public access.

(b) The presumptions created in this section shall not apply to criminal proceedings initiated pursuant to section 846E-9.

**§846E-C Tolling.** The time periods provided for in this chapter shall be tolled during any period of time the covered offender is committed or recommitted to prison or confined to a halfway house, or an equivalent facility, pursuant to a parole or probation violation.

**§846E-D Determination of whether a sex offender is a sexually violent predator.** Whenever a petition for termination of registration requirements is filed pursuant to section 846E-A, or upon petition by the State at any time after a determination of guilt, a court, in a civil proceeding, shall make a determination as to whether a sex offender is a sexually violent predator. The determination of whether a person is a sexually violent predator for purposes of this section shall be made by a court after considering the recommendation of a board, appointed by the chief justice of the supreme court, composed of experts in the behavior and treatment of sex offenders, victims' rights advocates, and representatives of law enforcement agencies. The State and the sex offender may, at their discretion and expense, select additional experts in the field of psychiatry or psychology to conduct additional evaluations of the covered offender. The court shall make a determination as to whether or not the sex offender is a sexually violent predator for purposes of this chapter."

SECTION 2. Chapter 846E, Hawaii Revised Statutes, is amended by amending its title to read as follows:



**“[CHAPTER 846E]”**  
**[SEX OFFENDER] REGISTRATION OF SEX OFFENDERS AND**  
**OTHER COVERED OFFENDERS AND [NOTIFICATION] PUBLIC**  
**ACCESS TO REGISTRATION INFORMATION”**

SECTION 3. Section 846E-1, Hawaii Revised Statutes, is amended as follows:

1. By adding fifteen new definitions to be appropriately inserted and to read: ““Aggravated sex offender” means:

- (1) A person convicted of an “aggravated sexual offense” as defined in this section; or
- (2) A person who is charged with an “aggravated sexual offense” as defined in this section and found unfit to proceed and is released into the community or acquitted due to a physical or mental disease, disorder, or defect pursuant to chapter 704 and is released into the community.

“Aggravated sexual offense” means:

- (1) A criminal offense described in section 707-730(1)(a), 707-730(1)(b), 707-731(1)(b), 707-732(1)(b), 707-732(1)(f), and 707-733.5, but excludes conduct that is criminal only because of the age of the victim, if the perpetrator is under the age of eighteen;
- (2) A criminal offense that is comparable to one of the offenses designated in paragraph (1) or any federal, military, or out-of-state offense that, under the laws of this State would be an aggravated sexual offense as designated in paragraph (1); or
- (3) An act, as described in chapter 705, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the offenses designated in paragraphs (1) or (2).

“Conviction” means a judgment on the verdict, or a finding of guilt after a plea of guilty or nolo contendere, excluding the adjudication of a minor.

“Covered offender” means a “sex offender” or an “offender against minors,” as defined in this section.

“Covered offense” means a criminal offense that is:

- (1) A crime within the definition of “crimes against minors” in this section; or
- (2) A crime within the definition of “sexual offense” in this section.

“Crime against minors,” excludes “sexual offenses” as defined in this section and means a criminal offense that consists of:

- (1) Kidnapping of a minor, except by a parent;
- (2) Unlawful imprisonment in the first degree of a minor, except by a parent;
- (3) An act, as described in chapter 705, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the offenses designated in paragraph (1) or (2); or
- (4) A criminal offense that is comparable to or which exceeds one of the offenses designated in paragraphs (1) through (3) or any federal, military, or out-of-state conviction for any offense that, under the laws of this State would be a crime against minors as designated in paragraphs (1) through (3).

“Mental abnormality” means a condition involving a disposition to commit criminal sexual offenses with a frequency that makes the person a menace to others.

“Offender against minors” means a person who is not a “sex offender,” as defined in this section, and is or has been:

- (1) Convicted at any time, whether before or after the effective date of this Act, of a “crime against minors” as defined in this section; or
- (2) Charged at any time, whether before or after the effective date of this Act with a “crime against minors” as defined in this section and who is found unfit to proceed and is released into the community or who is acquitted due to a physical or mental disease, disorder, or defect pursuant to chapter 704 and is released into the community.

“Parent” means a parent, legal guardian, or a person who has a substantial familial or hanai relationship with the minor.

“Personality disorder” shall have the same meaning as the term is used in the Diagnostic and Statistical Manual of Mental Health Disorders: DSM-IV, American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (4th ed. 1994).

“Predatory” means an act directed at:

- (1) A stranger; or
- (2) A person with whom a relationship has been established or promoted for the primary purpose of victimization.

“Release” means release from:

- (1) Imprisonment;
- (2) Imprisonment and placed on parole;
- (3) Imprisonment and placed on furlough;
- (4) Any form of commitment, custody, or confinement resulting from an order made pursuant to chapter 704; or
- (5) A halfway house or other equivalent facility,

whichever is later.

“Repeat covered offender” means:

- (1) A person who is or has been convicted at any time, whether before or after the effective date of this Act of more than one covered offense as defined in this section; or
- (2) A person who is or has been charged at any time, whether before or after the effective date of this Act with more than one covered offense as defined in this section and who has been, more than once, either:
  - (A) Convicted;
  - (B) Found unfit to proceed pursuant to chapter 704; or
  - (C) Acquitted due to a physical or mental disease, disorder, or defect pursuant to chapter 704.

“Sexual offense” means an offense that is:

- (1) Set forth in section 707-730(1)(a), 707-730(1)(b), 707-730(1)(c), 707-731(1)(a), 707-731(1)(b), 707-731(1)(c), 707-732(1)(a), 707-732(1)(b), 707-732(1)(c), 707-732(1)(d), 707-732(1)(e), 707-732(1)(f), 707-733(1)(a), 707-733.5, or 712-1202(b), but excludes conduct that is criminal only because of the age of the victim, as provided in section 707-730(1)(b), or section 707-732(1)(b) if the perpetrator is under the age of eighteen;
- (2) An act defined in section 707-720 if the charging document for the offense for which there has been a conviction alleged intent to subject the victim to a sexual offense;
- (3) An act that consists of:
  - (A) Criminal sexual conduct toward a minor;
  - (B) Solicitation of a minor who is less than fourteen years old to engage in sexual conduct;
  - (C) Use of a minor in a sexual performance;

- (D) Production, distribution, or possession of child pornography chargeable as a felony under section 707-750, 707-751, or 707-752;
- (E) Electronic enticement of a child chargeable as a felony under section 707-756 or 707-757, if the act involves:
- (i) Sexual conduct;
  - (ii) Attempted sexual conduct; or
  - (iii) A proposal to engage in sexual conduct;  
or
- (F) Solicitation of a minor to practice prostitution;
- (4) A criminal offense that is comparable to or that exceeds a sexual offense as defined in paragraphs (1) through (3) or any federal, military, or out-of-state conviction for any offense that under the laws of this State would be a sexual offense as defined in paragraphs (1) through (3); or
- (5) An act, as described in chapter 705, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the offenses designated in paragraphs (1) through (4).

“Sexually violent predator” means a person:

- (1) Who is a sex offender; and
- (2) Who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexual offenses.”

2. By amending the definitions of “agency having jurisdiction” and “sex offender” to read:

““Agency having jurisdiction” means that agency with the authority to direct the release of a person serving a sentence or term of confinement or place a person on probation, supervised release, or parole and includes the department of public safety, the Hawaii paroling authority, [~~the office of youth services,~~] the courts,<sup>1</sup> and the department of health.

“Sex offender” means:

- (1) [~~Any~~] A person [convicted of a “sexually violent offense” or a “criminal offense against a victim who is a minor”]; who is or has been convicted at any time, whether before or after the effective date of this Act of a “sexual offense”; or
- (2) [~~Any~~] A person who is [charged with a “sexually violent offense” or a “criminal offense against a victim who is a minor”]; or has been charged at any time, whether before or after the effective date of this Act with a “sexual offense” and is or has been found unfit to proceed and is or has been released into the community or who is acquitted due to a physical or mental disease, disorder, or defect pursuant to chapter 704[.] and is released into the community.”

3. By deleting the definitions of “criminal offense against a victim who is a minor” and “sexually violent offense”.

[~~““Criminal offense against a victim who is a minor” means any criminal offense that consists of:~~

- (1) ~~Kidnapping of a minor, except by a parent;~~
- (2) ~~Unlawful imprisonment in the first degree of a minor, except by a parent;~~
- (3) ~~Criminal sexual conduct toward a minor;~~
- (4) ~~Solicitation of a minor who is less than fourteen years old to engage in sexual conduct;~~
- (5) ~~Use of a minor in a sexual performance, or any crime defined in part VI of chapter 707 involving:~~
  - (A) ~~Sexual conduct;~~

- ~~(B) Attempted sexual conduct; or~~
- ~~(C) A proposal to engage in sexual conduct;~~
- ~~(6) Solicitation of a minor to practice prostitution;~~
- ~~(7) Any conduct that by its nature is a sexual offense against a minor, but excludes conduct that is criminal only because of the age of the victim, as provided in section 707-730(1)(b) or section 707-732(1)(b), if the perpetrator is eighteen years of age or younger;~~
- ~~(8) An act, as described in chapter 705, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the offenses designated in paragraphs (1) through (7); or~~
- ~~(9) Any state, federal, or military law similar to paragraphs (1) through (8). “Sexually violent offense” means an act committed on, before, or after July 1, 1997, that is:~~
  - ~~(1) An act defined in section 707-730(1)(a), 707-730(1)(b), 707-731(1)(a), 707-731(1)(b), 707-732(1)(a), 707-732(1)(e), and 707-733(1)(a);~~
  - ~~(2) A criminal offense that is comparable to a sexually violent offense as defined in paragraph (1) or any federal or out-of-state conviction, for any offense that under the laws of this State would be a sexually violent offense as defined in paragraph (1); or~~
  - ~~(3) An act, as described in chapter 705, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the offenses designated in paragraph (1) or (2).”]~~

SECTION 4. Section 846E-2, Hawaii Revised Statutes, is amended to read as follows:

**“§846E-2 Registration requirements.** (a) A [sex] covered<sup>2</sup> offender shall register with the attorney general and comply with the provisions of this chapter for life[-] or for a shorter period of time as provided in this chapter. A covered offender who is not:

- (1) An aggravated sex offender;
- (2) A repeat covered offender; and
- (3) A sexually violent predator,

shall be eligible to petition the court in a civil proceeding for an order that the covered offender’s registration requirements under this chapter be terminated, as provided in section 846E-A.

(b) Each provision of this chapter applicable to sex offenders shall also be applicable to offenders against minors, unless offenders against minors are specifically excluded. Whenever a covered offender’s public information is made publicly accessible, separate registries shall be maintained for:

- (1) Sex offenders; and
- (2) Offenders against minors.

~~[(b)]~~ (c) Registration information for each [sex] covered offender shall consist of a recent photograph, verified fingerprints, and [the following information:] a signed statement by the covered offender containing:

- (1) [Name] The name, all prior names, and all aliases used by the [sex] covered offender or under which the [sex] covered offender has been known and other identifying information, including date of birth, social security number, sex, race, height, weight, and hair and eye color;
- (2) The [legal] actual address and telephone number of the [sex] covered offender’s residence or mailing address, or any current, temporary address where the [sex] covered offender resides, and for each address how long the [sex] covered offender has resided there;

- (3) The ~~[legal]~~ actual address and telephone number where the ~~[sex]~~ covered offender is staying for a period of more than ten days, if other than the stated residence;
- (4) ~~[The]~~ If known, the future address and telephone number where the ~~[sex]~~ covered offender is planning to reside, if other than the stated residence;
- (5) Names and ~~[legal addresses]~~, if known, actual business addresses of current and known future employers and the starting and ending dates of any such employment;
- (6) Names and ~~[legal addresses]~~ actual addresses of current and known future educational institutions with which the ~~[sex]~~ covered offender is affiliated in any way, whether or not compensated, including but not limited to affiliation as a faculty member, an employee, or a student, and the starting and ending dates of any such affiliation;
- (7) The year, make, model, color, and license number of all vehicles currently owned or operated by the ~~[sex]~~ covered offender;
- (8) ~~[A summary of the criminal offenses against victims who were minors and sexually violent offenses]~~ A statement listing all covered offenses for which the ~~[sex]~~ covered offender has been convicted or found unfit to proceed or acquitted pursuant to chapter 704;
- (9) A statement indicating whether the ~~[sex]~~ covered offender has received or is currently receiving treatment ~~[for mental abnormality or personality disorder]~~; ordered by a court of competent jurisdiction or by the Hawaii paroling authority;
- (10) A statement indicating whether the ~~[sex]~~ covered offender is a United States citizen; and
- (11) Any additional identifying information about the ~~[sex]~~ covered offender.

~~[(e)]~~ (d) Whenever a ~~[sex]~~ covered offender provides registration information, during initial registration as a ~~[sex]~~ covered offender or when providing notice of a change in registration information, the ~~[sex]~~ covered offender also shall sign a statement verifying that all of the registration information is accurate and current.

~~[(d)]~~ (e) In addition to the requirement under subsection (a) to register with the attorney general and comply with the provisions of this chapter ~~[for life,]~~ until a court relieves the covered offender of the registration requirements of this chapter, each ~~[sex]~~ covered offender shall also register in person with the ~~[county]~~ chief of police ~~[having jurisdiction of the area]~~ where the ~~[sex]~~ covered offender resides or is present. Registration under this subsection is for the purpose of providing the ~~[sex]~~ covered offender's photograph, fingerprints, and registration information. Registration under this subsection is required whenever the ~~[sex]~~ covered offender, whether or not a resident of this State, remains in this State for more than ten days or for an aggregate period exceeding thirty days in one calendar year. ~~[Sex]~~ Covered offenders required to register in person with the ~~[county]~~ chief of police under this subsection shall register ~~[within]~~ no later than three working days ~~[upon:]~~ after:

- (1) Arrival in this State;
- (2) Release from incarceration;
- (3) Release from commitment;
- (4) Release on furlough;
- (5) Placement on parole; or
- (6) Arrival in a county in which the ~~[sex]~~ covered offender resides or expects to be present for a period exceeding ten days.

In addition to any other requirement to register under this subsection or subsection (a), each ~~[sex]~~ covered offender shall report in person every five years to the

[county] chief of police [of the county] where the [sex-offender's residence is located] covered offender resides for purposes of having a new photograph taken.

(f) The registration provisions of this section shall apply to all covered offenders without regard to:

- (1) The date of the covered offender's conviction;
- (2) The date of finding, pursuant to chapter 704, of the covered offender's unfitness to proceed; or
- (3) The date of the covered offender's acquittal due to mental disease, disorder, or defect, pursuant to chapter 704."

SECTION 5. Section 846E-3, Hawaii Revised Statutes, is amended to read as follows:

**"§846E-3 Access to registration information.** (a) Registration information shall be disclosed as follows:

- (1) The information shall be disclosed to law enforcement agencies for law enforcement purposes;
- (2) The information shall be disclosed to government agencies conducting confidential background checks;
- (3) The attorney general and any county police department shall release relevant information that is necessary to protect the public information as provided in subsection (b) concerning a specific person required to register under this chapter; provided that the identity of a victim of an offense that requires registration under this chapter shall not be released.

(b) For purposes of this section, [~~"relevant information that is necessary to protect the public"~~] "public information" means:

- (1) Name, <sup>3</sup> prior names, and all aliases used by the [sex] covered offender or under which the [sex] covered offender has been known;
- (2) The actual address where the [sex] covered offender resides and how long the [sex] covered offender has resided there;
- (3) The actual address where the [sex] covered offender is staying for more than ten days, if other than the stated residence;
- (4) The future actual address, if known, where the [sex] covered offender is planning to reside, if other than the stated residence;
- (5) The [actual addresses] street name and zip code of the [sex] covered offender's current locations of employment;
- (6) Names and [legal] actual addresses of current and known future educational institutions with which the [sex] covered offender is affiliated as a faculty member, an employee, or a student, and the starting and ending dates of any such affiliation;
- (7) The year, make, model, color, and license number of all vehicles currently owned or operated by the [sex] covered offender[;], excluding vehicles operated exclusively for purposes of work;
- (8) [A brief summary of the criminal offenses against victims who were minors and the sexually violent] A statement listing all covered offenses for which the [sex] covered offender has been convicted or found unfit to proceed or acquitted pursuant to chapter 704; and
- (9) A recent photograph of the [sex] covered offender.

~~[(c) Relevant information that is necessary to protect the public shall be collected for purposes of making it available to the general public, and a sex offender shall have a diminished expectation of privacy in the information.~~

~~(d) Prior to public release of a sex offender's relevant information under subsection (f), the State shall petition the court, in a civil proceeding, for an order~~

permitting its release. The petition shall be filed with the court in which the offense was prosecuted, or, in the case where the offense did not occur in the State, in the circuit of the sex offender's residence with the court for which jurisdiction would be proper had the offense occurred in this State. The State shall be represented by the prosecuting attorney for the county where the hearing is held. The State shall have the burden of proving, by a preponderance of the evidence, that the sex offender is required to register under this chapter. Proof by the State shall give rise to a presumption that public release of relevant information is necessary to protect the public. The sex offender shall be given the opportunity to present evidence to rebut the presumption and to show that the offender does not represent a threat to the community and that public release of relevant information is not necessary.

If the court determines that public release of relevant information is necessary to protect the public, the court shall issue an order for the release. The order shall set the time duration of public release of relevant information, which shall be for a minimum period of ten years, unless any factor listed in paragraph (2), (4), (5), or (6) applies. If any of these factors apply, then the time duration of the public release shall be for the life of the sex offender; provided that upon petition by the sex offender, the court may modify its order for lifetime public release upon a showing, by clear and convincing evidence, that the sex offender suffers an extraordinary physical disability that prevents the offender from committing future sexual offenses.

The court in making its determination shall consider the following factors:

- (1) The offense involved the death or serious bodily injury of another person;
- (2) The offense resulted in sentencing under the terms of section 706-606.5, 706-660.2, or 706-661;
- (3) The offender has inexcusably failed to comply with terms and conditions of probation or parole;
- (4) The victim was twelve years of age or younger at the time of the offense;
- (5) The offender either prior to or subsequent to the offense requiring registration under this chapter, has been convicted, found unfit to proceed, or acquitted due to a physical or mental disease, disorder, or defect, of a sexual offense or an offense against children, including all offenses occurring in other jurisdictions;
- (6) The offender has been convicted, found unfit to proceed, or acquitted due to a physical or mental disease, disorder, or defect, of a sexual assault as defined in section 707-730(1)(a) or an offense that is comparable in another jurisdiction;
- (7) The offender has inexcusably failed to register as a sex offender or is otherwise not in compliance with this chapter; and
- (8) The offender has been convicted of any crime since the conviction requiring the offender's registration.

(e) Subsections (d) and (f) shall not apply to offenders who have been convicted of a single misdemeanor sexual offense. Offenders convicted of multiple sexual offenses shall be subject to subsections (d) and (f).

(f) The release of relevant information that is necessary to protect the public shall be accomplished by public access to a file containing the relevant information on each registered sex offender, a copy of which shall be provided for inspection upon request at the Hawaii criminal justice data center and at one or more designated police stations in each county, between the hours of 8:00 a.m. and 4:30 p.m. on weekdays excluding holidays. The chief of police and the attorney general shall provide the relevant information on sex offenders upon payment of reasonable fees. Relevant information on each registered sex offender may also be released from an electronic database maintained by the respective law enforcement agencies that is accessible to users through an interactive computer-based system.]

(c) Public access to a covered offender's public information shall be permitted with regard to each covered offender beginning the next working day

following the filing of a judgment of conviction, a finding of unfitness to proceed or an acquittal due to mental disease, disorder, or defect, for a covered offense, or as soon thereafter as is practical. When a notice of appeal has been filed, the public information shall note that the covered offender has filed a notice of appeal. The public information shall be removed upon the reversal of the covered offender's conviction or the granting of a pardon to the covered offender. Public access shall continue until the expiration of at least the following periods:

- (1) Forty years after sentencing or release, whichever is later, of a sexually violent predator or a repeat covered offender with at least two separate convictions for a crime for which this chapter requires registration, one of which is a felony;
- (2) Thirty years after sentencing or release, whichever is later, of any covered offender who has been convicted of an aggravated sexual offense;
- (3) Twenty-five years after sentencing or release, whichever is later, of any covered offender who is not subject to paragraph (1) or (2), and whose most serious covered offense conviction, except for a conviction under sections 707-730(1)(c), is a class A felony or its non-Hawaii equivalent;
- (4) Fifteen years after a covered offender's date of sentencing or release, whichever is later, for those covered offenders who are not subject to paragraphs (1) through (3) and whose most serious covered offense conviction is a class B felony, or a conviction under sections 707-730(1)(c), or its non-Hawaii equivalent;
- (5) Ten years after a covered offender's date of sentencing or release, whichever is later, for those covered offenders who are not subject to paragraphs (1) through (4) and:
  - (A) Whose most serious covered offense conviction is a class C felony or its non-Hawaii equivalent; or
  - (B) Have been convicted of a second or subsequent misdemeanor covered offense when all of the previous covered offenses are also misdemeanors.

(d) Public access authorized by this section shall be accomplished by the following methods:

- (1) Public access to the public information for each covered offender subject to subsection (c), paragraphs (1) through (4) shall be provided by both public Internet access and on-site public access or;
- (2) Public access to the public information for each covered offender subject to subsection (c), paragraph (5) shall be provided by on-site public access;

provided that on-site public access shall be provided for each covered offender at the Hawaii criminal justice data center and at one or more designated police stations in each county, to be designated by the attorney general, between the hours of 8:00 a.m. and 4:30 p.m. on weekdays, excluding holidays.

(e) After forty years have elapsed after release or sentencing, whichever is later, for covered offenders subject to subsection (c), paragraph (1); thirty years have elapsed after release or sentencing, whichever is later, for covered offenders subject to subsection (c), paragraph (2); twenty-five years have elapsed after release or sentencing, whichever is later, for covered offenders subject to subsection (c), paragraph (3); fifteen years have elapsed after release or sentencing, whichever is later for covered offenders subject to subsection (c), paragraph (4); and ten years have elapsed after release or sentencing, whichever is later, for covered offenders subject to subsection (c), paragraph (5), a covered offender may petition the court in



a civil proceeding to terminate public access. The court may order this termination upon proof by a preponderance of the evidence that the covered offender:

- (1) Has had no new convictions for covered offenses;
- (2) Is very unlikely to commit a covered offense ever again; and
- (3) Public access to the covered offender's public information will not assist in protecting the safety of the public or any member thereof;

provided that a denial by the court for relief pursuant to a petition under this section shall preclude the filing of another petition for five years from the date of the last denial.

(f) If a covered offender has been convicted of only one covered offense and that covered offense is a misdemeanor, the covered offender shall not be subject to the public access requirements set forth in this section.

(g) The following message shall be posted at both the site of Internet access and on-site public access locations:

"Information regarding covered offenders is permitted pursuant to chapter 846E. Public access to this information is based solely on the fact of each offender's criminal conviction and is not based on an estimate of the offender's level of dangerousness. By allowing public access to this information, the State makes no representation as to whether the covered offenders listed are dangerous. Any person who uses the information in this registry to injure, harass, or commit a criminal act against any person included in the registry may be subject to criminal prosecution, civil liability, or both."

(h) The public access provisions of this section shall apply to all covered offenders without regard to the date of conviction.

(i) "Conviction" as used in this section means:

- (1) A judgment on the verdict, or a finding of guilt after a plea of guilty or nolo contendere, excluding the adjudication of a minor;
- (2) A finding of unfitness to proceed resulting in the release of the covered offender into the community, excluding such a finding as to a minor; or
- (3) An acquittal due to a physical or mental disease, disorder, or defect pursuant to chapter 704 resulting in the release of the covered offender into the community, excluding such acquittal as to a minor."

SECTION 6. Section 846E-4, Hawaii Revised Statutes, is amended to read as follows:

**"§846E-4 Duties upon discharge, parole, or release of [sex] covered offender.** (a) Each person, or that person's designee, in charge of a jail, prison, hospital, school, or other institution to which a [sex] covered offender has been committed pursuant to a conviction, or an acquittal or finding of unfitness to proceed pursuant to chapter 704, for a ~~[sexually violent offense or a criminal offense against a victim who is a minor,]~~ covered offense, and each judge, or that judge's designee, who continues bail for or releases a [sex] covered offender following a guilty verdict or a plea of guilty or nolo contendere, who releases a [sex] covered offender on probation or who discharges a [sex] covered offender upon payment of a fine, and each agency having jurisdiction, shall, prior to the discharge, parole, or release of the [sex] covered offender:

- (1) Explain to the [sex] covered offender the duty to register and the consequences of failing to register under this chapter;
- (2) Obtain from the [sex] covered offender all of the registration information required by this chapter;
- (3) Inform the [sex] covered offender that if at any time the [sex] covered offender changes any of the [sex] covered offender's registration information, the [sex] covered offender shall notify the attorney general of the new registration information in writing within three working days;

- (4) Inform the [sex] covered offender that, if at any time the [sex] covered offender changes residence to another state, the [sex] covered offender shall register the new address with the attorney general and also with a designated law enforcement agency in the new state, if the new state has a registration requirement, within the period of time mandated by the new state's sex offender registration laws;
- (5) Obtain and verify fingerprints and a photograph of the [sex] covered offender, if these have not already been obtained or verified in connection with the offense that triggers the registration;
- (6) Require the [sex] covered offender to sign a statement indicating that the duty to register has been explained to the [sex] covered offender; and
- (7) Give one copy of the signed statement and one copy of the registration information to the [sex] covered offender.

(b) No [sex] covered offender required to register under this chapter shall be discharged, released from any confinement, or placed on parole or probation unless the requirements of subsection (a) have been satisfied and all registration information required under section 846E-2 has been obtained.

(c) Notwithstanding any law to the contrary, a copy of the signed statement and one copy of the registration information shall be transmitted to the attorney general within three working days.

(d) Following receipt of the information from the agency having jurisdiction over the [sex] covered offender, the attorney general immediately shall enter the information into a statewide record system, unless the information has been previously entered into a statewide record system, and notify the county police department or appropriate law enforcement agency having jurisdiction where the [sex] covered offender expects to reside. The attorney general immediately shall transmit the conviction data and verified fingerprints to the Federal Bureau of Investigation, unless the items have been previously transmitted to the Federal Bureau of Investigation.

(e) The chief of police shall transmit any [sex] covered offender registration information required by this chapter to the attorney general, by entering the information into a statewide record system, if the information has not previously been entered into the system, and also shall provide the attorney general with a photograph and fingerprints of the [sex] covered offender, taken at the time the [sex] covered offender registers with the chief of police. The [sex] covered offender shall report in person every five years to the [county] chief of police [of the county] where the [sex] covered offender's residence is located for purposes of having a new photograph taken."

SECTION 7. Section 846E-5, Hawaii Revised Statutes, is amended to read as follows:

“~~[(E)]~~**§846E-5(H) Periodic verification of registration information.** Unless the [sex] covered offender is incarcerated or has registered with a designated law enforcement agency after establishing residence in another state, on the first day of every ninety-day period following the [sex] covered offender's initial registration date:

- (1) The attorney general shall mail a nonforwardable verification form to the last reported address of the [sex] covered offender;
- (2) The [sex] covered offender shall sign the verification form and state that the [sex] covered offender still resides at the address last reported to the attorney general and that no other registration information has changed or shall provide the new information;

- (3) The [sex] covered offender shall mail the signed and completed verification form to the attorney general within ten days after receipt of the form; and
- (4) If the [sex] covered offender fails to mail the verification form to the attorney general within ten days after receipt of the form, the [sex] covered offender shall be in violation of this chapter, unless the [sex] covered offender proves that the [sex] covered offender has not changed the residence address.

This section shall become effective on July 1, 1998.”

SECTION 8. Section 846E-6, Hawaii Revised Statutes, is amended to read as follows:

**“§846E-6 Requirement to register a change of registration information; verification by the attorney general.** (a) A [sex] covered offender required to register under this chapter, who changes any of the [sex] covered offender’s registration information after an initial registration with the attorney general, shall notify the attorney general of the new registration information in writing within three working days of the change. For purposes of this section, a person shall be deemed to have established a new residence during any period in which the person is absent from the person’s registered residence for ten or more days. If the new residence is in another state that has a registration requirement, the person shall register with the designated law enforcement agency in the state to which the person moves, within the period of time mandated by the new state’s sex offender registration laws.

(b) If the attorney general receives notice from the Federal Bureau of Investigation that a [sex] covered offender required to be registered under this chapter or under any federal law has entered the State, the attorney general shall notify the Federal Bureau of Investigation of the offender’s new residence.

(c) If the attorney general cannot verify the address of or locate a [sex] covered offender required to be registered under this chapter or under federal law, the attorney general immediately shall notify the Federal Bureau of Investigation.”

SECTION 9. Section 846E-7, Hawaii Revised Statutes, is amended to read as follows:

**“§846E-7 Notification by the attorney general of changes in registration information.** Immediately, and in no event, not later than ten days after receiving notice of a change of registration information, the attorney general shall report the change of registration information by a [sex] covered offender required to register under this chapter to the county police department where the [sex] covered offender is residing and, in the event the [sex] covered offender changes address to another county or state, shall report such change of address to the Federal Bureau of Investigation. If the person changes residence to another state, the attorney general also shall notify the law enforcement agency with which the person must register in the new state, if the new state has a registration requirement.”

SECTION 10. Section 846E-9, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

**“§846E-9 Failure to comply with [sex] covered offender registration requirements.** (a) A person commits the offense of failure to comply with [sex] covered offender registration requirements if the person is required to register under this chapter and the person intentionally, knowingly, or recklessly:

- (1) Fails to register with the attorney general by providing to the attorney general or the Hawaii criminal justice data center the person's registration information;
- (2) Fails to report in person to the [eounty] chief of police [of the eounty] where the [sex] covered offender's residence is located, for purposes of having a new photograph taken within five years after the previous photograph was taken;
- (3) Fails to register in person with the [eounty] chief of police having jurisdiction of the area where the [sex] covered offender resides or is present within three working days whenever the provisions of section [846E-2(d)] 846E-2(e) require the person to do so;
- (4) Fails to notify the attorney general or the Hawaii criminal justice data center of a change of any of the [sex] covered offender's registration information in writing within three working days of the change;
- (5) Provides false registration information to the attorney general, the Hawaii criminal justice data center, or a chief of police;
- (6) Signs a statement verifying that all of the registration information is accurate and current when any of the registration information is not substantially accurate and current; or
- ~~(7) Fails to comply with any other requirement of this chapter.~~<sup>4</sup>
- (7) Fails to mail or deliver the periodic verification of registration information form to the attorney general within ten days of receipt, as required by section 846E-5; provided that it shall be an affirmative defense that the periodic verification form mailed to the covered offender was delivered when the covered offender was absent from the registered address and the covered offender had previously notified the Hawaii criminal justice data center that the covered offender would be absent during the period that the periodic verification form was delivered.<sup>5</sup>

SECTION 11. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 12. This Act shall have retroactive application.

SECTION 13. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>5</sup>

SECTION 15. This Act shall take effect upon its approval.

(Approved May 9, 2005.)

#### Notes

1. "The courts," should not be underscored.
2. "Covered" should be underscored.
3. Comma should be underscored.
4. Period should be bracketed and stricken.
5. Edited pursuant to HRS §23G-16.5.

## ACT 46

H.B. NO. 516

A Bill for an Act Relating to Emergency Health Powers.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 321, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . EMERGENCY RESPONSE STOCKPILE TO PREPARE FOR OR RESPOND TO CBRNE EVENTS**

**§321- Definitions.** Whenever used in this part, unless a different meaning clearly appears from the context:

“CBRNE event” means the use of chemicals, biological agents, radioactive materials, nuclear devices, or explosives to kill or sicken people, animals, or plants.

“Department” means the department of health.

“Director” means the director of health.

“Emergency response stockpile” means a strategic supply of drugs, vaccines and other biological products, medical devices, and related supplies maintained by the department to protect or treat the population of the State in the event of a CBRNE event.

**§321- Emergency response stockpile to prepare for or respond to CBRNE events; exemption from certain laws and rules.** (a) In addition to any other power or duty prescribed by law or in this part, the director, through the department, may maintain an emergency response stockpile to prepare for or respond to a CBRNE event. The director may undertake all lawful activities necessary to carry out this part, including but not limited to adopting rules pursuant to chapter 91, disbursing funds for grants or subsidies pursuant to chapter 42F, and procuring goods or services pursuant to chapter 103D or 103F.

(b) Notwithstanding any other law to the contrary, in preparing for or responding to a CBRNE event, the director and the department shall be exempt from chapters 328 and 461 and any related administrative rules, as those chapters and rules relate to the dispensing, labeling, prescribing, or storage of the emergency response stockpile.”

SECTION 2. This Act shall take effect upon its approval.

(Approved May 10, 2005.)

## ACT 47

S.B. NO. 698

A Bill for an Act Relating to the Hawaii Criminal Justice Data Center.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 846-28, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department of the attorney general shall require, collect, secure, make, and maintain a record of the following items of information [~~so far as it is practicable to secure the same,~~] with respect to each applicant for registration:

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- (1) The name of the person applying to be registered (hereinafter called the "registrant" or "applicant"), the street and number or address of the applicant's place of permanent residence, and the applicant's residence and business telephone numbers, if any;
- (2) The applicant's occupation and any pertinent data relating thereto;
- (3) The applicant's racial extraction;
- (4) The applicant's citizenship;
- (5) The date and place of the applicant's birth;
- (6) The applicant's personal description, including sex, height, weight, hair, eyes, complexion, build, scars, and marks;
- (7) The applicant's right and left index fingerprints or, if the applicant has no right index finger or left index finger, other identifying imprint as specified by rules of the department; provided that this requirement shall not apply to minors until they reach the age of three years;
- (8) The name, relationship, and address of the nearest relative or other person to be notified in case of sickness, accident, death, emergency, or need of the applicant, if such notification is desired; ~~and~~
- (9) The social security number of the applicant~~[-]; and~~
- (10) A frontal photograph of the applicant's full face.

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 10, 2005.)

ACT 48

S.B. NO. 621

A Bill for an Act Relating to Traffic Infractions.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 291D-3, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Notwithstanding any other provision of law to the contrary, all traffic infractions shall be adjudicated pursuant to this chapter, except as provided in subsection (b). This chapter shall be applied uniformly throughout the State and in all counties. ~~[Penal sanctions except fines]~~ No penal sanction that includes imprisonment shall [not] apply to a violation of a state statute or rule, or county ordinance or rule, that would constitute a traffic infraction under this chapter. [Traffic infractions] No traffic infraction shall [not] be classified as a criminal [offenses.] offense.

(b) ~~[Traffic infractions]~~ No traffic infraction that [involve] involves an accident resulting in personal injury or property damage [or are] and is committed in the same course of conduct as a criminal offense for which the offender is arrested or charged shall [not] be adjudicated pursuant to this chapter, but shall be adjudicated by the appropriate district or circuit court of the circuit in which the traffic infraction was committed, whichever has jurisdiction pursuant to the applicable statute or rules of court. In no event shall section 701-109 preclude prosecution for a criminal offense where a traffic infraction committed in the same course of conduct has been adjudicated pursuant to this chapter."

SECTION 2. Section 291D-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The form for the notice of traffic infraction shall be prescribed by rules of the district court which shall be uniform throughout the State. Except in the case of traffic infractions involving parking, the notice shall include the following:

- (1) A statement of the specific traffic infraction, including a brief statement of facts, for which the notice was issued;
- (2) A statement of the total amount to be paid for each traffic infraction, which amount shall include any fee, surcharge, or cost required by statute, ordinance or rule, and any monetary assessment, established for the particular traffic infraction pursuant to section 291D-9, to be paid by the driver, which shall be uniform throughout the State;
- (3) A statement of the options provided in section 291D-6(b) for answering the notice and the procedures necessary to exercise the options;
- (4) A statement that the person to whom the notice is issued must answer, choosing one of the options specified in section 291D-6(b), within ~~[fifteen]~~ twenty-one days;
- (5) A statement that failure to answer the notice of traffic infraction within ~~[fifteen]~~ twenty-one days shall result in the entry of judgment by default for the State and may result in the assessment of a late penalty [assessed], and, that if the driver fails to pay the [monetary assessment] total amount specified in the default judgment within an additional thirty days or otherwise take action to set aside the default, notice shall be sent to the director of finance of the appropriate county that the person to whom the notice was issued shall not be permitted to renew or obtain a driver’s license or, where the notice was issued to a motor vehicle, the registered owner [will] shall not be permitted to register, renew the registration of, or transfer title to the motor vehicle until the traffic infraction is finally disposed of pursuant to this chapter;
- (6) A statement that, at a hearing requested to contest the notice of traffic infraction conducted pursuant to section 291D-8 or in consideration of a written statement contesting the notice of traffic infraction, no officer ~~[will]~~ shall be present unless the driver timely requests the court to have the officer present. The standard of proof to be applied by the court is whether a preponderance of the evidence proves that the specified traffic infraction was committed;
- (7) A statement that, at a hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the infraction or in consideration of a written request for mitigation, the person ~~[will]~~ shall be considered to have committed the traffic infraction;
- (8) A space in which the driver’s signature, current address, and driver’s license number may be affixed; and
- (9) The date, time, and place at which the driver must appear in court, if the driver ~~[chooses]~~ is required by the notice to go to hearing.”

SECTION 3. Section 291D-6, Hawaii Revised Statutes, is amended by amending subsection (a) & (b) to read as follows:

“(a) A person who receives a notice of traffic infraction shall answer the notice within ~~[fifteen]~~ twenty-one days of the date of the notice. There shall be included with the notice of traffic infraction a preaddressed envelope directed to the traffic violations bureau of the applicable district court.

(b) In ~~[an answer to]~~ answering a notice of traffic infraction, a person shall ~~[either:]~~ have the following options:

- (1) Admit the commission of the infraction [~~by completing the appropriate portion of the notice of traffic infraction and submitting it, either by~~] in one of the following ways:
  - (A) By mail or in person, by completing the appropriate portion of the notice of traffic infraction and submitting it to the authority specified on the notice together with payment[~~, except as provided in section 291D-9(d), in~~] of the total amount [of the monetary assessment] stated on the notice of traffic infraction. Payment by mail shall be in the form of a check, money order, or by an approved credit or debit card. Payment in person shall be in the form of United States currency, check, money order, or by an approved credit or debit card; or
  - (B) Via the Internet or by telephone, by submitting payment of the total amount stated on the notice of traffic infraction. Payment via the Internet or by telephone shall be by an approved credit or debit card;
- (2) Deny the commission of the infraction and request a hearing to contest the infraction by completing the appropriate portion of the notice of traffic infraction and submitting it, either by mail or in person, to the authority specified on the notice. In lieu of a hearing, the person may submit a written statement of grounds on which the person contests the notice of traffic infraction, which shall be considered by the court as a statement given in court pursuant to section 291D-8(a); or
- (3) Admit the commission of the infraction and request a hearing to explain circumstances mitigating the infraction by completing the appropriate portion of the notice of traffic infraction and submitting it, either by mail or in person, to the authority specified on the notice. In lieu of a hearing, the person may submit a written explanation of the mitigating circumstances, which shall be considered by the court as a statement given in court pursuant to section 291D-8(b).''

SECTION 4. Section 291D-7, Hawaii Revised Statutes, is amended to read as follows:

**“§291D-7 Court action after answer or failure to answer.** (a) When an admitting answer is received, the court shall review the driver’s abstract. The court shall enter judgment in favor of the State in the total amount [of the monetary assessment] specified in the notice of traffic infraction. If the [~~monetary assessment~~] total amount is not submitted with the answer, the court shall take action as provided in section 291D-10.

- (b) When a denying answer is received, the court shall proceed as follows:
  - (1) In the case of a traffic infraction that does not involve parking[.], where the person requests a hearing to contest the infraction, the court shall [proceed as provided in section 291D-8(a).] notify the person in writing of the date, time, and place of hearing to contest the notice of traffic infraction. The notice of hearing shall be sent to the address stated in the answer, or if none is given, to the address stated on the notice of traffic infraction. The notification also shall advise the person that, if the person fails to appear at the hearing, the court shall enter judgment by default in favor of the State, as of the date of the scheduled hearing, that the total amount specified in the default judgment must be paid within thirty days from notice of default, and, if it is not paid, that the court shall take action as provided in section 291D-10;



- (2) In the case of a traffic infraction that involves parking, the court shall notify the person or registered owner or owners in writing of the date, time, and place of hearing to contest the notice of traffic infraction. The notice of hearing shall be sent ~~[within thirty days from the post-marked date of the answer]~~ to the address stated in the denying answer or, if none is given, to the address at which the vehicle is registered. The notification also shall advise the person that, if the person fails to appear at the hearing, the court shall enter judgment by default in favor of the State, as of the date of the scheduled hearing, that the ~~[monetary assessment must]~~ total amount specified in the default judgment shall be paid within thirty days from notice of default, and, if it is not paid, that the court [with] shall take action as provided in section 291D-10[-]; and
- (3) When a denying answer is accompanied by a written statement of the grounds on which the person contests the notice of the traffic infraction, the court shall proceed as provided in section 291D-8(a) and shall notify the person of its decision, including the total amount [of the monetary assessment] assessed by mailing it within thirty days of the postmarked date of the answer to the address provided by the person in the answer, or if none is given, to the address given when the notice of traffic infraction was issued or, in the case of parking violations, to the address stated in the denying answer or, if none is given, to the address at which the vehicle is registered. The decision also shall advise the person, if it is determined that the infraction was committed, that the person has the right, within thirty days, to request a trial and shall specify the procedures for doing so. The notice of decision shall also notify the person, if ~~[a monetary assessment]~~ an amount is assessed by the court[-] for fines, fees, surcharges, costs, or monetary assessments, that if the person does not request a trial, the [assessment] total amount assessed shall be paid within thirty days. The notice shall warn the person that if the ~~[assessment]~~ total amount is not paid within thirty days, the court shall take action as provided in section 291D-10.
- (c) When an answer admitting commission of the infraction but seeking to explain mitigating circumstances is received, the court shall proceed as follows:
- (1) In the case of a traffic infraction which does not involve parking[-] where the person requests a hearing to explain mitigating circumstances, the court shall [proceed as provided in section 291D-8(b).] notify the person in writing of the date, time, and place of hearing to explain mitigating circumstances. The notice of hearing shall be sent to the address stated in the answer, or if none is given, to the address stated on the notice of traffic infraction. The notification also shall advise the person that, if the person fails to appear at the hearing, the court shall enter judgment by default in favor of the State, as of the date of the scheduled hearing, that the total amount stated in the default judgment shall be paid within thirty days from notice of default, and, if it is not paid, that the court shall take action as provided in section 291D-10;
- (2) In the case of a traffic infraction which involves parking, the court shall notify the person in writing of the date, time, and place of the hearing. The notice shall be sent~~[-, within thirty days from the postmarked date of the answer,]~~ to the address at which the vehicle is registered. The notice of hearing on mitigating circumstances shall advise the person that the court ~~[with]~~ shall enter judgment for the State and the hearing [with] shall be limited to an explanation of the mitigating circumstances. The notice of hearing also shall state that if the person fails to

appear at the hearing, the ~~[monetary assessment must]~~ total amount specified in the default judgment shall be paid within thirty days of the scheduled hearing. The notice of hearing shall warn the person that if the ~~[monetary assessment]~~ total amount is not paid within thirty days, the court shall take action as provided in section 291D-10~~[-];~~ and

- (3) If a written explanation is included with an answer admitting commission of the infraction, the court shall enter judgment for the State and, after reviewing the explanation, determine the total amount of the ~~[monetary assessment]~~ finest, fees, surcharges, costs, or monetary assessments to be assessed, if any. The court shall then notify the person of the ~~[monetary assessment]~~ total amount to be paid for the infraction, if any. There shall be no appeal from the order. If the court assesses ~~[a monetary assessment,]~~ an amount for fines, fees, surcharges, costs, or monetary assessments, the court shall also notify the person that the ~~[assessment]~~ total amount shall be paid within thirty days of the post-marked date of the decision. The notice ~~[shall]~~ also shall warn the person that if the ~~[monetary assessment]~~ total amount is not paid within thirty days, the court shall take action as provided in section 291D-10.

(d) If the person fails to answer within ~~[fifteen]~~ twenty-one days of issuance of the notice of traffic infraction, the court shall take action as provided in subsection (e).

(e) Whenever judgment by default in favor of the State is entered, the court shall mail a notice of entry of judgment of default to the address provided by the person when the notice of traffic infraction was issued or, in the case of parking violations, to the address stated in the answer, if any, or the address at which the vehicle is registered. The notice shall advise the person that the ~~[monetary assessment]~~ total amount specified in the default judgment shall be paid within thirty days and shall explain the procedure for setting aside a default judgment. The notice shall also warn the person that if the ~~[monetary assessment]~~ total amount is not paid within thirty days, the court shall take action as provided in section 291D-10. Judgment by default for the State entered pursuant to this chapter may be set aside pending final disposition of the traffic infraction upon written application of the person and posting of an appearance bond equal to the amount of the ~~[monetary assessment]~~ total amount specified in the default judgment and any other assessment imposed pursuant to section 291D-9. The application shall show good cause or excusable neglect for the person's failure to take action necessary to prevent entry of judgment by default. Upon receipt of the application, the court shall take action to remove the restriction placed on the person's driver's license or the motor vehicle's registration and title imposed pursuant to section 291D-10. Thereafter, the court shall determine whether good cause or excusable neglect exists for the person's failure to take action necessary to prevent entry of judgment by default. If so, the notice of traffic infraction shall be disposed of pursuant to this chapter. If not, the appearance bond shall be forfeited and the notice of traffic infraction shall be finally disposed. In either case, the court ~~[shall]~~, within thirty days, shall determine the existence of good cause or excusable neglect and notify the person of its decision in writing."

SECTION 5. Section 291D-10, Hawaii Revised Statutes, is amended to read as follows:

**"[§]291D-10[§] Restriction on driver's license and motor vehicle registration.** (a) When the person issued a notice of traffic infraction not involving parking fails to pay ~~[a monetary assessment]~~ the total amount of fines, fees, surcharges, costs, or monetary assessments that has been ordered, the court shall cause an entry to be made in the driver's license record so as to prevent the person

[whose assessment is outstanding] from acquiring or renewing the person's driver's license until the outstanding [assessment] amount is paid or the notice of traffic infraction is otherwise disposed of pursuant to this chapter.

(b) In all cases where the registered owner of a motor vehicle to which a notice of traffic infraction has been issued fails to pay ~~any~~ the total amount of fines, fees, surcharges, costs, or monetary assessments that have been ordered, the court shall cause an entry to be made in the motor vehicle's record so as to prevent issuance or renewal of the motor vehicle's certificate of registration and transfer of title to the motor vehicle until the outstanding [assessment] amount is paid or the notice of traffic infraction is otherwise disposed of pursuant to this chapter."

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on January 1, 2006; provided that section 1 shall take effect upon approval.

(Approved May 11, 2005.)

## ACT 49

H.B. NO. 685

A Bill for an Act Relating to Wireless Enhanced 911 Service.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 138-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is created within the department of accounting and general services, for administrative purposes, a wireless enhanced 911 board consisting of eleven voting members; provided that the membership shall consist of:

- (1) The ~~director of health or the director's~~ comptroller or the comptroller's designee;
- (2) Three representatives from wireless providers, who shall be appointed by the governor as provided in section 26-34, except as otherwise provided by law;
- (3) One representative each from the public safety answering points for Oahu, Hawaii, Kauai, Maui, and Molokai, who shall be appointed by the governor, as provided in section 26-34, except as otherwise provided by law, from a list of five names submitted by each respective public safety answering point;
- (4) The consumer advocate or the consumer advocate's designee; and
- (5) One representative of the current wireline provider of enhanced 911."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2005.

(Approved May 11, 2005.)

A Bill for an Act Relating to Procurement.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to promote the growth and development of small businesses, including but not limited to businesses qualified under the state department of transportation's disadvantaged business enterprise program and the federal 8(a) business development and small disadvantaged business certification programs.

This Act requires the procurement policy board to adopt rules to promote small business growth and development that include:

- (1) Set-asides for small businesses in appropriate classifications of requirements suitable to performance by small businesses; and
- (2) Criteria designed to encourage the use of small businesses as subcontractors on large contracts.

SECTION 2. Chapter 103D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§103D- Preference for small businesses; set-asides; use as subcontractors.** The policy board shall adopt rules to promote the growth and development of small businesses that shall include:

- (1) Set-asides for small businesses in appropriate classifications of requirements suitable to performance by small businesses; and
- (2) Criteria designed to encourage the use of small businesses as subcontractors on large contracts.”

SECTION 3. Section 103D-901, Hawaii Revised Statutes, is amended by amending the definition of “small business” to read as follows:

““Small business” means a [United States] business [which] that is independently owned [and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation. The] and defined by detailed criteria pursuant to rules adopted by the policy board.<sup>1</sup> The policy board shall adopt rules [establishing more detailed criteria for defining small business, including] defining “small business” through detailed criteria that may include the number of employees[-] and similar factors used by the U.S. Small Business Administration.”

SECTION 4. Section 103D-903, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) In carrying out this part, the chief procurement officer may:

- (1) Give special publicity to procurement procedures and issue special publications designed to assist small businesses in learning how to do business with the State;
- (2) Compile, maintain, and make available source lists of small businesses for the purpose of encouraging procurement from small business;
- (3) Include small businesses on solicitation mailing lists;
- (4) Develop and conduct training programs to assist small businesses;
- (5) Reduce the level or change the types of bonding normally required or accept alternative forms of security;
- (6) Make special provisions for progress payments; [and]

- (7) Establish the goal that twenty per cent of the State's annual purchasing expenditure be awarded to small business[-]; and
- (8) Impose mandatory evaluation criteria designed to encourage the use of small business as subcontractors on large contracts not susceptible to performance by small business.'

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 6. This Act shall take effect on July 1, 2005.

(Approved May 12, 2005.)

#### Notes

1. Period should be underscored.
2. Edited pursuant to HRS §23G-16.5.

## ACT 51

H.B. NO. 1301

A Bill for an Act Relating to Invasive Species.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. In 2003, the legislature established the Hawaii invasive species council and found "the silent invasion of Hawaii by alien invasive species is the single greatest threat to Hawaii's economy, natural environment, and the health and lifestyle of Hawaii's people and visitors." The council provides the institutional framework for leadership and coordination of a statewide invasive species prevention and control program among the federal, state, and county levels of government, the University of Hawaii, and nongovernmental organizations to maximize limited resources to address this challenge.

Through past legislative support, the Hawaii invasive species council played a key role in attempting to contain environmental scourges, including the coqui frog. It is the intent of the legislature to continue this support to educate Hawaii's public on the problems caused by the coqui frog and assist in its control and eradication statewide.

The legislature also finds that it is necessary to accelerate response and control efforts of the coqui frog. Therefore, in addition to the amounts requested by the Hawaii invasive species council for the biennial period, the purpose of this Act is to appropriate additional funds directly to the counties, to work in collaboration with each county's invasive species committee or other invasive species working groups, specifically for response and control efforts for programs and initiatives that are found to be most effective in the control or eradication of the coqui frog.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2005-2006 for response and control efforts for programs and initiatives that are found to be most effective in the control or eradication of the coqui frog, to each county, to work in collaboration with each county's invasive species committee or other invasive species working groups, as follows:

ACT 52

|                             |            |
|-----------------------------|------------|
| City and county of Honolulu | \$50,000   |
| County of Kauai             | \$50,000   |
| County of Maui              | \$100,000  |
| County of Hawaii            | \$100,000  |
| Total                       | \$300,000. |

The sums appropriated to each county shall be expended by that county for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2005.

(Approved May 12, 2005.)

ACT 52

H.B. NO. 769

A Bill for an Act Relating to Unclaimed Property.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 421C, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“**§421C- Annual report of unclaimed property.** Chapter 523A shall not apply to an electric utility cooperative association; provided that each association within one hundred twenty days after the close of the association’s fiscal year, shall file with the director of finance an annual report of unclaimed property in its possession in a form prescribed by the director of finance; provided further that the electric utility cooperative association shall remain responsible for the payment of all claims relating to unclaimed property reported by it to the director of finance.

**§421C- Disposition of non-escheat patronage refunds.** (a) An electric utility cooperative association shall transfer all non-escheat patronage refunds to a nonprofit corporation incorporated pursuant to chapter 414D.

(b) The nonprofit corporation to which non-escheat patronage refunds are transferred pursuant to subsection (a) shall use the non-escheat patronage refunds to:

- (1) Fund electric energy assistance programs for low-income persons who reside in the service area of the electric utility cooperative association;
- (2) Make donations to other nonprofit charitable and community organizations, as authorized by its board of directors;
- (3) Grant educational scholarships to individuals who reside in the service area of the electric utility cooperative association; or
- (4) Support other appropriate uses for the benefit of the general membership of the electric utility cooperative association, as may be authorized by its board of directors.”

SECTION 2. Section 421C-1, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

““Electric utility cooperative association” means a consumer cooperative association that provides electric utility service as a public utility.

“Non-escheat patronage refunds” means patronage refunds from an electric utility cooperative association for which a five-year period has elapsed since the patronage refunds were made and for which no claims have been made by the patrons to whom the refunds were allocated.

“Unclaimed property” includes moneys, checks, drafts, interest, dividends, income, credit balances, overpayments, deposits, refunds, and non-escheat patronage refunds.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved May 13, 2005.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 53**

H.B. NO. 1413

A Bill for an Act Relating to Hawaiian Homes Commission Act, 1920, as Amended.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 208 of the Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

**“§208. Conditions of leases.** Each lease made under the authority granted the department by section 207 of this Act, and the tract in respect to which the lease is made, shall be deemed subject to the following conditions, whether or not stipulated in the lease:

- (1) The original lessee shall be a native Hawaiian, not less than eighteen years of age. In case two lessees either original or in succession marry, they shall choose the lease to be retained, and the remaining lease shall be transferred, quitclaimed, or canceled in accordance with the provisions of succeeding sections.
- (2) The lessee shall pay a rental of \$1 a year for the tract and the lease shall be for a term of ninety-nine years; except that the department may extend the term of any lease; provided that the approval of any extension shall be subject to the condition that the aggregate of the initial ninety-nine year term and any extension granted shall not be for more than one hundred ninety-nine years.
- (3) The lessee may be required to occupy and commence to use or cultivate the tract as the lessee’s home or farm or occupy and commence to use the tract for aquaculture purposes, as the case may be, within one year after the commencement of the term of the lease.
- (4) The lessee thereafter, for at least such part of each year as the department shall prescribe by rules, shall occupy and use or cultivate the tract on the lessee’s own behalf.
- (5) The lessee shall not in any manner transfer to, or otherwise hold for the benefit of, any other person or group of persons or organizations of any kind, except a native Hawaiian or Hawaiians, and then only upon the approval of the department, or agree so to transfer, or otherwise hold, the lessee’s interest in the tract; except that the lessee, with the approval of the department, also may transfer the lessee’s interest in the tract to the following qualified relatives of the lessee who are at least one-quarter Hawaiian: husband, wife, child, or grandchild. A lessee who is at least one-quarter Hawaiian who has received an interest in the tract through succession or transfer may, with the approval of the depart-

ment, transfer the lessee's leasehold interest to a brother or sister who is at least one-quarter Hawaiian. Such interest shall not, except in pursuance of such a transfer to or holding for or agreement with a native Hawaiian or Hawaiians or qualified relative who is at least one-quarter Hawaiian approved of by the department or for any indebtedness due the department or for taxes or for any other indebtedness the payment of which has been assured by the department, including loans from other agencies where such loans have been approved by the department, be subject to attachment, levy, or sale upon court process. The lessee shall not sublet the lessee's interest in the tract or improvements thereon; provided that a lessee may be permitted, with the approval of the department, to rent to a native Hawaiian or Hawaiians, lodging either within the lessee's existing home or in a separate residential dwelling unit constructed on the premises.

- (6) Notwithstanding the provisions of paragraph (5), the lessee, with the consent and approval of the commission, may mortgage or pledge the lessee's interest in the tract or improvements thereon to a recognized lending institution authorized to do business as a lending institution in either the State or elsewhere in the United States; provided the loan secured by a mortgage on the lessee's leasehold interest is insured or guaranteed by the Federal Housing Administration, Department of Veterans Affairs, or any other federal agency and their respective successors and assigns, which are authorized to insure or guarantee such loans, or any acceptable private mortgage insurance as approved by the commission. The mortgagee's interest in any such mortgage shall be freely assignable. Such mortgages, to be effective, must be consented to and approved by the commission and recorded with the department.

Further, notwithstanding the authorized purposes of loan limitations imposed under section 214 of this Act and the authorized loan amount limitations imposed under section 215 of this Act, loans made by lending institutions as provided in this paragraph, insured or guaranteed by the Federal Housing Administration, Department of Veterans Affairs, or any other federal agency and their respective successors and assigns, or any acceptable private mortgage insurance, may be for such purposes and in such amounts, not to exceed the maximum insurable limits, together with such assistance payments and other fees, as established under section 421 of the Housing and Urban Rural Recovery Act of 1983 which amended Title II of the National Housing Act of 1934 by adding section 247, and its implementing regulations, to permit the Secretary of Housing and Urban Development to insure loans secured by a mortgage executed by the homestead lessee covering a homestead lease issued under section 207(a) of this Act and upon which there is located a one to four family single family residence.

- (7) The lessee shall pay all taxes assessed upon the tract and improvements thereon. The department may pay such taxes and have a lien therefor as provided by section 216 of this Act.
- (8) The lessee shall perform such other conditions, not in conflict with any provision of this Act, as the department may stipulate in the lease; provided that an original lessee shall be exempt from all taxes for the first seven years after commencement of the term of the lease."

SECTION 2. New statutory material is underscored.



SECTION 3. This Act shall take effect upon its approval.

(Approved May 16, 2005.)

## ACT 54

S.B. NO. 768

A Bill for an Act Relating to Contests Involving No Rules Combat, Extreme or Ultimate Fighting, and Other Similar Competitions.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. There have been thirteen deaths nationwide during competitions of unarmed combat since 1981 and six reported cases of serious injury since 1980. Currently, some form of unarmed combat is prohibited in thirteen states and regulated in twenty-four states, although the terminology and definitions for the prohibited or regulated activity vary in each state. Florida and Washington enacted legislation in response to the June, 2003 death of a thirty-year-old Florida woman during a toughman competition. Current Hawaii law prohibits no rules combat, extreme or ultimate fighting, and similar contests pursuant to chapter 440D, Hawaii Revised Statutes.

The purpose of this Act is to:

- (1) Enforce the ban on no rules combat, extreme or ultimate fighting, and similar contests for the protection and safety of contestants in competitions of unarmed combat; and
- (2) Establish requirements for exemptions to this prohibition.

SECTION 2. Chapter 440D, Hawaii Revised Statutes, is amended by adding six new sections to be appropriately designated and to read as follows:

**“§440D- Definitions.** As used in this chapter:

“Department” means the department of commerce and consumer affairs.

“Director” means the director of commerce and consumer affairs.

“No rules combat, extreme or ultimate fighting” means a match or exhibition performed in this state, in which the contestants:

- (1) Are permitted to use a combination of combative contact techniques, including punches, kicks, chokes, joint locks, and other maneuvers, with or without the use of weapons; and
- (2) Have received or are to receive, directly or indirectly, any money, prize, reward, purse, or other compensation, or promise thereof, for the expenses of training, for taking part in the contest, or for winning the contest.

The term does not include a match or exhibition involving the exclusive use of boxing, wrestling, kickboxing, or martial arts.

**§440D- No rules combat, extreme or ultimate fighting, and other similar competitions prohibited; exemption.** (a) No person shall hold, promote, or participate as a contestant in any no rules combat, extreme or ultimate fighting, or other similar competition.

(b) No rules combat, extreme or ultimate fighting, and other similar competitions shall not be prohibited if the match or exhibition is scheduled or held:

- (1) Between medically fit and adult contestants who are not disqualified from competing in another jurisdiction at the time of the match or exhibition;
- (2) Pursuant to the promoter’s rules or restrictions for the match or exhibition that protect the safety of contestants;

- (3) Under the direction and control of an adult referee in the ring who has at least one year's experience in refereeing a match or exhibition involving a combination of combative techniques and who has passed a physical examination by a licensed physician, including an eye examination, within two years prior to the match or exhibition;
- (4) Under the medical supervision of a physician licensed pursuant to chapter 453 or 460 who is present at ringside; and
- (5) In a manner that will promote maximum safety for the contestants, to the extent feasible.

**§440D- Exemption.** (a) At least thirty days prior to a match or exhibition, a promoter shall provide to the department information and documents, as prescribed by the department, together with a review and enforcement fee of \$500, to establish that the match or exhibition is not prohibited by this chapter. If the department determines prior to the match or exhibition that the match or exhibition is prohibited by this chapter, the department shall refund the \$500 review and enforcement fee to the promoter.

(b) Within seven days following a match or exhibition that is not prohibited by this chapter, the promoter of the match or exhibition shall provide the department with an unedited video record of the match or exhibition in a format prescribed by the department.

**§440D- Violation and penalty; rebuttable presumption.** (a) In addition to any other applicable remedy, a person who violates this chapter shall be subject to a fine of not more than \$10,000 for each offense. Each day's violation or failure to comply shall be deemed a separate offense. The fines shall be levied and collected by the department.

(b) The submission of false information or documents by a promoter to the department under this chapter shall constitute a violation of this chapter.

(c) In any proceeding involving an allegation of a violation of this chapter by a promoter or contestant, there shall be a rebuttable presumption that a violation has occurred, and the promoter or contestant shall have the burden of overcoming the presumption.

**§440D- Injunctive relief.** The department may bring an action in any court of this State to enjoin a person from continuing any violation of this chapter or doing any acts in furtherance thereof, and for any other relief that the court deems appropriate.

**§440D- Rules.** The director may adopt rules pursuant to chapter 91 necessary to effectuate the purposes of this chapter.''

SECTION 3. Section 440D-1, Hawaii Revised Statutes, is repealed.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect upon its approval.

(Approved May 16, 2005.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Making Appropriations for Claims Against the State, its Officers, or its Employees.

*Be It Enacted by the Legislature of the State of Hawaii:*

PART I

SECTION 1. The following sums or so much thereof as may be necessary for fiscal year 2004-2005 are appropriated out of the general revenues of the State of Hawaii to the department of the attorney general for the purpose of satisfying claims for legislative relief as to the following named persons, firms, corporations, and entities, for claims against the State or its officers or employees for the overpayment of taxes, or for refunds, reimbursements, payments of judgments or settlements, or other liabilities, in the amounts set forth opposite their names:

| <b>JUDGMENTS AGAINST THE STATE<br/>AND SETTLEMENTS OF CLAIMS:</b>   | <b>AMOUNT</b>               |
|---|-----------------------------|
| <b>1. DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES:</b>  |                             |
| Election Systems & Software, Inc. v. State<br>Procurement Office, State of Hawaii,<br>Department of Commerce and Consumer Affairs,<br>Office of Administrative Hearings, PCH-2004-14              | \$ 132,860.59<br>Judgment   |
| Eselu-Rumusod, et al. v. Clarin, et al.<br>Civil No. 04-1-0290-02, First Circuit<br>and<br>DTRIC Insurance Company, et al. v. State of<br>Hawaii, et al.<br>Civil No. 04-1-0722-04, First Circuit | \$ 19,850.00<br>Settlement  |
| Colleton v. State of Hawaii<br>Civil No. 03-1-1657-08, First Circuit  | \$ 37,595.44<br>Settlement  |
| In the Matter of Department of Accounting<br>and General Services,<br>DOH Docket No. 03-HW-EZ-05  | \$ 47,500.00<br>Settlement  |
| <b>SUBTOTAL:</b>  | <b>\$ 237,806.03</b>        |
| <b>2. DEPARTMENT OF EDUCATION:</b>  |                             |
| Brilhante v. State of Hawaii, et al.<br>Civil No. 02-1-2713-11, First Circuit   | \$ 250,000.00<br>Settlement |
| Craig v. State of Hawaii, Department of<br>Education, et al. Civil No. 03-1-0071(2),<br>Second Circuit  | \$ 26,066.57<br>Settlement  |
| Doe v. State of Hawaii, et al.<br>Civil No. 02-1-0239K, Third Circuit   | \$ 30,000.00<br>Settlement  |
| Harnik v. State of Hawaii, et al.<br>Civil No. 03-1-0015, Third Circuit   | \$ 35,000.00<br>Settlement  |
| Moniz v. County of Kauai, et al.<br>Civil No. 03-1-0022, Fifth Circuit  | \$ 50,000.00<br>Settlement  |

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| <b>JUDGMENTS AGAINST THE STATE<br/>AND SETTLEMENTS OF CLAIMS:</b>                             | <b>AMOUNT</b>               |
|---|-----------------------------|
| Tort Claim of Jessica James   | \$ 32,000.00<br>Settlement  |
| SUBTOTAL:   | \$ 423,066.57               |
| <b>3. DEPARTMENT OF HUMAN SERVICES</b>  |                             |
| Brown v. State of Hawaii, et al.<br>Civil No. 01-1-0609(2), Second Circuit                    | \$ 34,200.81<br>Settlement  |
| SUBTOTAL:   | \$ 34,200.81                |
| <b>4. DEPARTMENT OF LAND AND NATURAL RESOURCES</b>  |                             |
| Brub v. State of Hawaii, et al.<br>Civil No. 03-1-0500-03, First Circuit                      | \$ 70,000.00<br>Settlement  |
| Graves v. Lowe, et al.<br>Civil No. 04-1-0877-05, First Circuit                               | \$ 17,500.00<br>Settlement  |
| SUBTOTAL:   | \$ 87,500.00                |
| <b>5. DEPARTMENT OF PUBLIC SAFETY:</b>  |                             |
| Awong v. State of Hawaii, et al.<br>Civil No. 03-00498, USDC                                  | \$ 16,000.00<br>Settlement  |
| Baker v. Maui Community Correctional Center,<br>et al. Civil No. 04-1-0212(3), Second Circuit | \$ 29,000.00<br>Settlement  |
| Bernard, et al. v. State of Hawaii, et al.<br>Civil No. 02-00367 SPK-KSC, USDC                | \$ 12,348.49<br>Judgment    |
| Clark, et al. v. State of Hawaii, et al.<br>Civil No. 99-00885BMK, USDC                       | \$ 54,660.00<br>Settlement  |
| Hornberger v. State of Hawaii, et al.<br>Civil No. 03-1-2257-11, First Circuit                | \$ 14,000.00<br>Settlement  |
| Koja v. State of Hawaii, et al.<br>Civil No. 03-1-0274-02, First Circuit                      | \$ 25,000.00<br>Settlement  |
| MacKenzie v. State of Hawaii, et al.<br>Civil No. 02-1-2401-10, First Circuit                 | \$ 110,000.00<br>Settlement |
| Perez v. Ferris, et al.<br>Civil No. 03-1-0034, Fifth Circuit                                 | \$ 90,000.00<br>Settlement  |
| Weir v. State of Hawaii, et al.<br>Civil No. 98-0537(2), Second Circuit                       | \$ 15,645.63<br>Settlement  |
| SUBTOTAL:   | \$ 366,654.12               |
| <b>6. MISCELLANEOUS CLAIMS:</b>   |                             |
| Donna Baba & Associates   | \$ 272.12                   |
| Gail Nakamoto   | \$ 1,600.11                 |
| Romy Nochi  | \$ 46.00                    |
| SUBTOTAL:   | \$ 1,918.23                 |
| TOTAL (SECTION 1):  | \$1,151,145.76              |

The sums appropriated shall be expended by the department of the attorney general for the purposes of this Act.

PART II

SECTION 2. The following sums or so much thereof as may be necessary for fiscal year 2004-2005 are appropriated out of the state highway fund for the purpose of satisfying claims for legislative relief as to the following named persons, for claims against the State or its officers or employees for payments of judgments or settlements, or other liabilities, in the amount set forth opposite their names:

**JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS:**

DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION:

|  |                |
|--|----------------|
| Enterprise Rent-A-Car  | \$ 23,000.00   |
|  | Settlement     |
| Tort Claim of Scott Moura  | \$ 15,812.60   |
|  | Settlement     |
| Sakaguchi v. State of Hawaii, et al.<br>Civil No. 98-1640, First Circuit         | \$ 350,000.00  |
|  | Settlement     |
| Bacani v. Uchida, et al.<br>Civil No. 02-1-2099-09, First Circuit                | \$ 500,000.00  |
|  | Settlement     |
| Taylor, et al. v. State of Hawaii, et al.<br>Civil No. 03-1-0073K, Third Circuit | \$ 450,000.00  |
|  | Settlement     |
| SUBTOTAL:  | \$1,338,812.60 |
| TOTAL (SECTION 2):   | \$1,338,812.60 |

The sums appropriated shall be expended by the department of transportation, highways division, for the purposes of this Act.

SECTION 3. The legislature finds and declares that the following claim for legislative relief recommended for approval as to the following named person for claims against the State or the department of education or its officers or employees for the payment of judgments or settlements, or other liabilities, in the amount set forth opposite their name, is approved for payment:

**JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS:**

DEPARTMENT OF EDUCATION:

|   |              |          |
|---|--------------|----------|
| Doe v. State of Hawaii, et al.<br>Civil No. 02-1-0239K, Third Circuit | \$ 10,000.00 | (EDN 100 |
|   | Settlement   | Federal) |
| SUBTOTAL:   | \$ 10,000.00 |          |
| TOTAL (SECTION 3):  | \$ 10,000.00 |          |

Provided that of legislative appropriation item G-1 for the department of education for fiscal year 2004-2005 in section 3 of Act 200, Session Laws of Hawaii 2003, as amended by section 3 of Act 41, Session Laws of Hawaii 2004, the general fund sum of \$10,000 shall be expended from the 2004-2005 budget (EDN 100, federal funds) by the department of education for the purposes of this Act.

SECTION 4. The sums hereinabove may be paid to the respective persons, or for the satisfaction or settlement of the respectively identified cases, and in several amounts hereinabove set forth or in lesser amounts deemed appropriate, upon checks

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issued by the comptroller; provided that the departments shall obtain the approval of the attorney general before payment of any claim can be made.

SECTION 5. Notwithstanding the sums hereinabove stated as interest upon judgments against the State, payment of interest shall be limited to the period from the date of judgment, if applicable, to thirty days after the effective date of this part, as provided in section 662-8, Hawaii Revised Statutes, for those cases to which the statute applies.

### PART III

SECTION 6. All unexpended and unencumbered balances of the appropriations made in this Act as of the close of business on June 30, 2006, shall lapse.

SECTION 7. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 8. This Act shall take effect upon its approval.

(Approved May 16, 2005.)

## ACT 56

H.B. NO. 632

A Bill for an Act Relating to the Employees' Retirement System.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The board of trustees of the employees' retirement system of the State of Hawaii may adopt reasonable actuarial assumptions for the purposes of chapter 88, Hawaii Revised Statutes. Such purposes include the valuation of the assets and liabilities of the funds of the employees' retirement system and the determination of the actuarial equivalence, of amounts payable under the benefit options available to beneficiaries of the system under sections 88-83, 88-283, and 88-333, Hawaii Revised Statutes, to the 'maximum allowance' payable under parts II, VII, and VIII of chapter 88, Hawaii Revised Statutes.

Since 1961, beneficiaries of the employees' retirement system have been entitled to a post retirement allowance providing for a fixed annual increase in the benefits payable to them. Other public pensions, with retirement benefit provisions similar to the system's, include the effect of such post retirement adjustments in the actuarial assumptions on which the actuarial equivalency of benefit options are determined. The effect of the post retirement allowance is one of the assumptions used by the employees' retirement system's actuary to value the system's assets and liabilities.

Although it is reasonable and equitable to include the effect of the post retirement allowance as an assumption in the actuarial equivalency determinations that are required by sections 88-83, 88-283, and 88-333, the attorney general has advised the system that the language of the statutes precludes the adoption of such an assumption for such purpose.

The purpose of this Act is to amend chapter 88 to permit the board of trustees of the employees' retirement system to approve the effect of post retirement

allowances as an assumption for the purpose of establishing the amounts payable under the benefit options available pursuant to sections 88-83, 88-283, and 88-333.

SECTION 2. Chapter 88, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§88- Actuarial assumptions. Notwithstanding any provision in chapter 88 to the contrary, the board of trustees may approve the effect of the post retirement allowance under section 88-90, or of any other mandatory fixed scheduled increase in the benefits payable under part II, VII, or VIII, as an actuarial assumption for the purpose of determining the value of the options available under sections 88-83, 88-283, and 88-333.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act, upon its approval, shall take effect retroactive to December 1, 2004; provided that this Act shall not be applied so as to reduce the amount of any benefit payable under chapter 88, Hawaii Revised Statutes, to a member of the employees' retirement system retiring after November 30, 2004, but before August 1, 2005.

(Approved May 17, 2005.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 57**

S.B. NO. 738

A Bill for an Act Relating to the Employees' Retirement System.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 88, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§88- **Compromise and settlement.** The board may compromise or settle any claim for benefits under this chapter; provided that, if the compromise or settlement would result in a person receiving benefits that the person would not otherwise, as a matter of law, be entitled to receive, the compromise or settlement shall be subject to the approval of the attorney general and may be made only if:

- (1) The settlement or compromise relates to or arises out of a representation made to a member concerning the member's eligibility for benefits under this chapter;
- (2) The representation:
  - (A) Was made in writing by an employee of the system with authority to make representations on behalf of the system as to amounts of and eligibility for benefits under this chapter; and
  - (B) Was erroneous as to the amount or class of credited service to which the member was entitled;
- (3) The member, in good faith and reasonable reliance on the representation, retired or terminated the member's status as an employee or the member's membership in the system; and
- (4) The settlement or compromise will prevent manifest injustice.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval, and shall apply to claims existing on and arising on or after the effective date of this Act.

(Approved May 17, 2005.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 58**

H.B. NO. 631

A Bill for an Act Relating to the Employees' Retirement System.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 88, Hawaii Revised Statutes, is amended by adding a new section to part II, subpart C, to be appropriately designated and to read as follows:

**“§88- Federal limits on annual compensation for ordinary death benefit.** (a) Commencing July 1, 1996, compensation used to determine the benefit payable under section 88-84(a)(1) shall be subject to the annual limit set forth in section 401(a)(17) of the Internal Revenue Code of 1986, as amended; provided that there shall be paid to the beneficiary of any member:

- (1) Who dies while in service or on authorized leave without pay after June 30, 2004, and before July 1, 2006; and
- (2) Whose compensation earned during the year immediately preceding the member's death exceeds the annual limit set forth in section 401(a)(17) of the Internal Revenue Code of 1986, as amended,

a nontax-qualified benefit equal to the difference between the benefit that would have been payable under section 88-84(a)(1) without applying the limit under section 401(a)(17) of the Internal Revenue Code of 1986, as amended, to compensation earned prior to July 1, 2005, and the benefit that is payable under section 88-84(a)(1) applying the limit under section 401(a)(17) of the Internal Revenue Code of 1986, as amended, to the compensation earned during the year immediately preceding the member's death.

(b) The nontax-qualified benefit provided by subsection (a) shall be administered by the board of trustees; provided that:

- (1) State members shall be paid by the respective department or agency that employs the member pursuant to assessments made and received by the system; and
- (2) County members shall be paid by the respective counties pursuant to assessments made and received by the system.

(c) Section 88-91 shall apply to the nontax-qualified benefit.”

SECTION 2. Section 88-21, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Board”: the board of trustees of the employees' retirement system established pursuant to sections 88-23 and 88-24.”

SECTION 3. Section 88-23, Hawaii Revised Statutes, is amended to read as follows:



“§88-23 **General administration of system vested in board.** The general administration and the responsibility for the proper operation of the retirement system and for making effective the provisions of this part and ~~part~~ parts VII ~~[of this chapter]~~ and VIII are vested in a board of trustees; subject, however, to the area of administrative control vested in the department of budget and finance by sections 26-8 and 26-35. To fulfill its responsibilities, the system may require any department or agency of the State or counties to furnish information to the system to carry out the purposes of this chapter.”

SECTION 4. Section 88-47, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be four classes of members in the system to be known as class A, class B, class C, and class H, defined as follows:

- (1) Class A shall consist of:
  - (A) Judges, elected officials, and legislative officers;
  - (B) Investigators of the department of the attorney general, narcotics enforcement investigators, water safety officers not making the election under section 88-271, and public safety investigations staff investigators;
  - (C) Those members in service prior to July 1, 1984, including those who are on approved leave of absence, not making the election to become a class C member as provided in part VII or to become a class H member as provided in part VIII;
  - (D) The following members in service prior to July 1, 2006, including those who are on approved leave of absence, not making the election to become a class H member as provided in part VIII: members whose salaries are set forth in sections 26-52 and 26-53 and their county counterparts, managing directors or an administrative [assistants] assistant to the mayor ~~[and]~~, other county department heads, [including] and agency heads appointed and subject to removal by the mayor[;]; first deputies appointed by the county attorney and prosecuting attorney[;]; the county clerk and deputy county clerk of each county[;]; the administrative director of the courts[;]; the deputy administrative director of the courts[;]; the executive officer of the labor and industrial relations appeals board[;]; and the executive officer of the Hawaii labor relations board;
  - (E) All former class A retirants who return to employment after June 30, 1984, requiring the retirant’s active membership; and
  - (F) All former class B retirants who return to employment requiring the retirant’s active membership, except for:
    - (i) Former retirants who return in the positions of police officer or firefighter;
    - (ii) Former retirants who were members on July 1, 1957, who elected not to be covered by the Social Security Act; and
    - (iii) Former retirants who were in positions to which coverage under Title II of the Social Security Act was not extended who entered membership after June 30, 1957, but before January 1, 2004;
- (2) Class B shall consist of:
  - (A) Police officers and firefighters, including former retirants who return to service in such capacity;

- (B) All employees, including former retirants, who were members on July 1, 1957, who elected not to be covered by the Social Security Act; and
- (C) All employees, including former retirants, in positions to which coverage under Title II of the Social Security Act is not extended, who enter membership after June 30, 1957, but before January 1, 2004, not making the election to become a class H member as provided in part VIII;
- (3) Except for members described in paragraphs (1) and (2), class C shall consist of all employees, not making the election to become a class H member as provided in part VIII, who:
  - (A) First enter service after June 30, 1984, but before July 1, 2006;
  - (B) Reenter service after June 30, 1984, but before July 1, 2006, without vested benefit status as provided in section 88-96(b);
  - (C) Make the election to become a class C member as provided in part VII; or
  - (D) Are former class C retirants who return to service requiring the retirant's active membership; and
- (4) Except for members described in paragraphs (1) and (2), class H shall consist of all employees who:
  - (A) First enter service after June 30, 2006;
  - (B) Reenter service after June 30, 2006, without vested benefit status as provided in section 88-96(b);
  - (C) Make the election to become a class H member as provided in part VIII; or
  - (D) Are former class H retirants who return to service requiring the retirant's active membership."

SECTION 5. Section 88-59, Hawaii Revised Statutes, is amended to read as follows:

**“§88-59 Acquisition of membership service.** Under rules as the board of trustees may adopt, any member may file with the board a statement of all service as an employee or other service paid for by the State or a county rendered prior to the member's last becoming a member [~~which~~] that is not credited to the member, for which the member claims prior service credit, and also a statement of [~~such~~] the services for which the member claims membership service credit and for which the member agrees to have additional deductions made from the member's compensation or to make a lump sum payment as described in this section.

After the filing of the statement, the board shall verify the service claimed and determine the service credit allowable. Verified prior service shall be credited [~~and verified~~]. Verified membership service shall be paid for by the member in any one of the following methods, at the member's option:

- (1) By deductions from the member's compensation pursuant to section 414(h)(2) of the [~~federal~~] Internal Revenue Code of 1986, as amended, under the employer pick up plan under section 88-46. An irrevocable payroll authorization filed by the member for a period not to exceed sixty months shall remain in effect until the completion of the payroll payments or termination of employment, whichever is earlier. The member may elect to have:
  - (A) Deductions from the member's compensation of twice the contribution rate provided for in section 88-45 over a period equal to the period for which membership service credit is allowable not to exceed sixty months; or

- (B) Deductions from the member's compensation of one and one-half times the contribution rate provided for in section 88-45 over a period equal to twice the period for which membership service credit is allowable not to exceed sixty months; or
- (2) By lump sum payment of contributions computed at the contribution rate provided for in section 88-45 applied to the member's monthly rate of compensation at the time of payment multiplied by the number of months for which membership service credit is allowable; provided that after July 1, 1982, this method shall not be available to any new member with fewer than five years of membership service exclusive of any previous service acquired under paragraph (1).

The deductions from compensation or lump sum payment shall be paid to the system and shall be credited to the member's individual account and become part of the member's accumulated contributions.

Membership service credit, in addition to any other service credited to the member, shall be allowed for the period for which the deductions from compensation or lump sum payment have been made as described in this section.

The contribution rates under section 88-45 shall be reduced by one and eight-tenths per cent for any service being claimed that was rendered prior to July 1, 1961.

Any member of the legislature who reenrolls as an active member in accordance with section 88-62 and who desires to obtain membership service for a period of service as a member of the legislature during which the member received a retirement allowance [~~shall~~], in addition to complying with this section, shall refund while a reenrolled active member the retirement allowance received during the period of legislative service."

SECTION 6. Section 88-59.5, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

**“~~[[~~88-59.5~~]~~ ~~Prior~~ Previous membership service credit~~]~~ for legislative officers.** (a) Any member who on July 1, 1991, was serving or previously served as an assistant clerk or assistant sergeant at arms of either house of the legislature and becomes eligible for retirement benefits as a class A member as provided under sections ~~[88-73(1), 88-74(3),]~~ 88-73(a), 88-74(4), and 88-76 shall be entitled to full service credit as a class A member for any eligible service prior to July 1, 1991; provided that:

- (1) The member claims those years as ~~[prior]~~ membership service credit and purchases that ~~[prior]~~ membership service credit in accordance with section 88-59; and
- (2) Notwithstanding any other law to the contrary:
  - (A) If the member was a class A member of the system and elected to become a class C member pursuant to section 88-271, the member repurchases all the years of service as a class C member in accordance with the procedures under section 88-59 to regain standing as a contributory member; and
  - (B) A class C member shall be credited for service as an assistant clerk or assistant sergeant at arms under section 88-59 in a lump sum nonrefundable payment and receive retirement benefits as provided in this section."

SECTION 7. Section 88-74, Hawaii Revised Statutes, is amended to read as follows:

“§88-74 Allowance on service retirement. Upon retirement from service, a member shall receive a maximum retirement allowance as follows:

- (1) If the member has attained age fifty-five, a retirement allowance of two per cent of the member’s average final compensation multiplied by the total number of years of the member’s credited service as a class A and B member, excluding any credited service as a judge, elective officer, or legislative officer, plus a retirement allowance of one and one-fourth per cent of the member’s average final compensation multiplied by the total number of years of prior credited service as a class C member, plus a retirement allowance of two per cent of the member’s average final compensation multiplied by the total number of years of prior credited service as a class H member; provided that:
  - (A) After June 30, 1968, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a firefighter, police officer, or an investigator of the department of the prosecuting attorney;
  - (B) After June 30, 1977, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a corrections officer;
  - (C) After June 16, 1981, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as an investigator of the department of the attorney general;
  - (D) After June 30, 1989, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a narcotics enforcement investigator;
  - (E) After December 31, 1993, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a water safety officer;
  - (F) After June 30, 1994, if the member has at least ten years of credited service, of which the last five or more years prior to retirement are credited service as a public safety investigations staff investigator;
  - (G) After June 30, 2002, if the member:
    - (i) Has at least ten years of credited service as a firefighter;
    - (ii) Is deemed permanently medically disqualified due to a service related disability to be a firefighter by the employer’s physician; and
    - (iii) Continues employment in a class A or B position other than a firefighter; and
  - (H) After June 30, 2004, if the member:
    - (i) Has at least ten years of credited service as a police officer;
    - (ii) Is deemed permanently medically disqualified due to a service related disability to be a police officer by the employer’s physician; and
    - (iii) Continues employment in a class A or B position other than a police officer;

then for each year of service as a firefighter, police officer, corrections officer, investigator of the department of the prosecuting attorney, investigator of the department of the attorney general, narcotics enforcement investigator, water safety officer, or public safety investigations staff investigator, the retirement allowance shall be two and one-half per cent of the member’s average final compensation. The maximum

retirement allowance for those members shall not exceed eighty per cent of the member's average final compensation. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; provided that no reduction shall be made if the member has at least twenty-five years of credited service as a firefighter, police officer, corrections officer, investigator of the department of the prosecuting attorney, investigator of the department of the attorney general, narcotics enforcement investigator, public safety investigations staff investigator, sewer worker, or water safety officer, of which the last five or more years prior to retirement is credited service in such capacities;

- (2) If the member has made voluntary additional contributions for the purchase of an additional annuity and has not applied for a refund as permitted by section 88-72, the member may accept the refund at the time of retirement or, in lieu thereof, receive in addition to the retirement allowance provided in paragraph (1), an annuity that is the actuarial equivalent of the additional contributions with regular interest;
- (3) If the member has credited service as a judge, the member's retirement allowance shall be computed on the following basis:
  - (A) For a member who has credited service as a judge before July 1, 1999, irrespective of age, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service; and
  - (B) For a member who first earned credited service as a judge after June 30, 1999, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; or
  - (C) For a judge with other credited service, as provided in paragraphs (1) and (2). If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; or
  - (D) For a judge with credited service as an elective officer or as a legislative officer, as provided in paragraph (4).

No allowance shall exceed seventy-five per cent of the member's average final compensation. If the allowance exceeds this limit, it shall be adjusted by reducing the annuity included in subparagraphs (A) and (B) and the portion of the accumulated contributions specified in the subparagraphs in excess of the requirements of the reduced annuity shall be returned to the member. The allowance for judges under this paragraph, together with the retirement allowance provided by the federal government for similar service, shall in no case exceed seventy-five per cent of the member's average final compensation; or

- (4) If the member has credited service as an elective officer or as a legislative officer, the member's retirement allowance shall be derived by adding the allowances computed separately under subparagraphs (A), (B), (C), and (D) as follows:
- (A) Irrespective of age, for each year of credited service as an elective officer, three and one-half per cent of the member's average final compensation as computed under section 88-81(e)(1), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service; and
  - (B) Irrespective of age, for each year of credited service as a legislative officer, three and one-half per cent of the member's average final compensation as computed under section 88-81(e)(2), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service;
  - (C) If the member has credited service as a judge, the member's retirement allowance shall be computed on the following basis:
    - (i) For a member who has credited service as a judge before July 1, 1999, irrespective of age, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation as computed under section 88-81(e)(3), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service; and
    - (ii) For a member who first earned credited service as a judge after June 30, 1999, and has attained the age of fifty-five, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation as computed under section 88-81(e)(3), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; and
  - (D) For each year of credited service not included in subparagraph (A), (B), or (C), the average final compensation as computed under section 88-81(e)(4) shall be multiplied by two per cent for credited service earned as a class A or class H member, two and one-half per cent for credited service earned as a class B member, and one and one-quarter per cent for credited service earned as a class C member. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary.

The total retirement allowance shall not exceed seventy-five per cent of the member's highest average final compensation calculated under section 88-81(e)(1), (2), (3), or (4). If the allowance exceeds this limit, it shall be adjusted by reducing any annuity accrued under subparagraphs (A), (B), and (C) and the portion of the accumulated contributions specified in these subparagraphs in excess of the requirements of the reduced annuity shall be returned to the member. If a member has service credit as an elective officer or as a legislative officer in addition

to service credit as a judge, then the retirement benefit calculation contained in this paragraph shall supersede the formula contained in paragraph (3).”

SECTION 8. Section 88-76, Hawaii Revised Statutes, is amended to read as follows:

“**§88-76 Allowance on ordinary disability retirement.** Upon retirement for ordinary disability, a member shall receive a maximum retirement allowance of one and three-fourths per cent of the member’s average final compensation for each full year of credited service; except that for each year of credited service as a judge, an elective officer, or a legislative officer, the member shall receive a maximum retirement allowance computed as provided in section 88-74(3) or (4), as applicable. The minimum retirement allowance payable under this section shall be thirty per cent of the member’s average final compensation.”

SECTION 9. Section 88-80, Hawaii Revised Statutes, is amended to read as follows:

“**§88-80 Allowance on retirement for service-connected disability.** Upon retirement for service-connected disability, a member shall receive the amount of the member’s accumulated contributions and a maximum retirement allowance ~~[which]~~ that shall consist of fifty per cent of the member’s average final compensation.”

SECTION 10. Section 88-85, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Benefits payable under subsection (a) shall continue through the end of the last month in which the payee ~~[ceases to be]~~ is eligible for the benefit.”

SECTION 11. Section 88-94, Hawaii Revised Statutes, is amended to read as follows:

“**§88-94 Withholding of income taxes.** ~~[A retired member, if the retired member consents in writing, may have withheld from the retired member’s pension, annuity, or retirement allowance payment an equivalent percentage of such payment as will in the aggregate approximate such member’s federal income tax liability as would result from such pension, annuity, or retirement allowance within the meaning of the United States Internal Revenue Code;] Pension, annuity, and retirement allowance payments from the system shall be subject to income tax withholding requirements as set forth by the federal government; payment of ~~[such]~~ these taxes as withheld shall be the liability of the system. The board of trustees shall ~~[promulgate]~~ adopt rules ~~[and regulations]~~ to administer the purposes of this section.”~~

SECTION 12. Section 88-96, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any member having five or more years of credited service who ceases to be an employee ~~[shall]~~, upon application to the board of trustees, shall be paid all of the member’s accumulated contributions; provided that any such member shall not be paid the member’s accumulated contributions:

- (1) If the member becomes an employee again within fifteen calendar days from the date the member ceased to be an employee; or
- (2) If, at the time the application for return of accumulated contributions is received by the board of trustees, the member has become an employee again.

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If the contributions are not withdrawn by the member within four calendar years following the calendar year in which the member's employment terminates, the member shall ~~[be deemed to]~~ have established vested benefit status and shall be eligible for the service retirement benefit in effect at the time of the member's ~~[separation from service;]~~ retirement, payable in accordance with ~~[the provisions thereto]~~ this chapter, and the contributions shall not be withdrawn by the member thereafter."

SECTION 13. Section 88-97, Hawaii Revised Statutes, is amended to read as follows:

**"§88-97 Return to service of a member who has vested benefit status.** If a former member who has a vested benefit status as provided in section 88-96(b) returns to service before ~~[his]~~ the former member's retirement, ~~[he]~~ the former member shall again become a member and shall contribute for membership service as provided by the law in effect during ~~[his]~~ the member's reenrolled period of membership. Upon retirement, ~~[if the member has less than five years of credited service during the member's reenrollment period of membership, the benefit to which he has a vested right shall not be changed but whatever benefit accrued from his reenrollment period of membership shall be added to his vested benefit to comprise his retirement allowance. If he again leaves service before retiring and does not withdraw his contributions, his vested benefit shall consist of the combined retirement allowance.~~

~~However, if the member, upon retirement has five or more years of credited service during the member's reenrolled period of membership,] the member's benefit shall be [the greater of the allowance computed in the manner described in the preceding paragraph or] the benefit computed with the member's combined service included under the formula in effect at the time of retirement. [If the member again leaves service before retiring and does not withdraw his contributions, the member's vested benefit shall be the greater of the benefits as calculated in this paragraph.]"~~

SECTION 14. Section 88-102, Hawaii Revised Statutes, is amended to read as follows:

**"§88-102 Classification of members.** The board of trustees shall classify each member in one of the following groups:

- (1) ~~[Group 1.]~~ General employees of the State[;] and counties, including administrative, clerical, professional, and technical workers, mechanics, laborers, and all others not otherwise classified;
- (2) ~~[Group 2.]~~ Teachers, including all teachers regularly engaged in public education whose salaries are wholly or partly paid by the State[;], and faculty members and instructors of the University of Hawaii; or
- ~~[(3) Group 3. General employees of the counties, including administrative, clerical, professional, and technical workers, mechanics, laborers, and all others not otherwise classified;~~
- (4) ~~Group 4.]~~ (3) Police officers in the employ of the counties and fire-fighters in the employ of the State or of the counties[;],

~~or in any other group [which] that may be recommended by the actuary on the basis of service and mortality experience and approved by the board, to cover any part of any group or groups previously created or any additional class of employees."~~

SECTION 15. Section 88-124, Hawaii Revised Statutes, is amended to read as follows:



~~“§88-124 [State appropriations for] Payment of state contributions to the system. [Before October 2 in every year, the board of trustees shall certify to the governor the appropriation necessary to pay to the various funds of the system the amounts payable by the State under this part for the fiscal year, beginning July 1 of the year next following, and items of appropriation providing such amounts shall be included in the general appropriation bill when it is presented to the legislature for final passage.~~

~~Commencing with the 2006 calendar year and every subsequent calendar year, the board of trustees by October 2 in every calendar year, shall certify to the governor the actual amount owed by the State under this part for the just completed fiscal year ending June 30. The actual amount owed for the just completed fiscal year shall be compared against actual amounts paid in the fiscal year, and any excess contributions by the State shall be used to offset any amounts owed by the State in the next fiscal year beginning July 1. Any additional contributions owed by the State for the just completed fiscal year ending June 30 shall be payable beginning July 1 of the fiscal year next following and shall be included in the general appropriation bill when it is presented to the legislature for final passage.] (a) The State shall pay on a monthly basis to the various funds of the system the amounts payable by the State under this part. Payments shall be made within thirty days after the end of the month.~~

~~(b) The system shall determine the actual amount owed by the State under this part for each fiscal quarter, commencing with the first fiscal quarter of fiscal year 2005-2006. The actual amounts owed by the State for the fiscal quarter shall be compared against the amounts paid in the fiscal quarter. Any additional contributions owed by the State for a fiscal quarter shall be paid before the end of the next fiscal quarter. Any excess contributions by the State may be used to offset amounts owed by the State for the next fiscal quarter.”~~

SECTION 16. Section 88-126, Hawaii Revised Statutes, is amended to read as follows:

~~“§88-126 [Certification and payment] Payment of county contributions to the system. (a) The board of trustees shall certify annually to the councils of each county and to the director of finance of the State the amount due from each county on account of its employees who are members of the system. The council of each county shall include in its annual budget the amount certified to it by the board. The amount shall be paid by the county before October 1 and April 1 of each fiscal year.~~

~~(b)] (a) Commencing with fiscal year 2005-2006, each of the counties shall make contributions in accordance with section 88-123. [In calendar year 2006 and every subsequent calendar year, the board of trustees by October 2, shall certify to the councils of each county and to the director of finance of the State the actual amount owed by each county under this part for the just completed fiscal year ending June 30. The actual amount owed for the just completed fiscal year shall be compared against actual amounts paid in the fiscal year, and any excess contributions by each of the counties shall be used to offset any amounts owed in the next fiscal year beginning July 1. Any additional contributions owed by each of the counties for the just completed fiscal year ending June 30 shall be payable by October 1 and April 1 of the fiscal year next following. The council of each county shall include in its annual budget the amount certified to it by the board.] The amounts payable under this part by each county on account of its employees who are members of the system shall be paid by the county as follows:~~

- ~~(1) Before October 31, 2005, for the period from July 1, 2005, through September 30, 2005; and~~
- ~~(2) Commencing October 1, 2005, each county shall pay on a monthly basis the amounts payable by the county under this part on account of~~

its employees who are members of the system. Payments shall be made within thirty days after the end of the month.

(b) The system shall determine the actual amount owed by a county under this part for each fiscal quarter, beginning with the first fiscal quarter of fiscal year 2005-2006. The actual amounts owed by the county for the fiscal quarter shall be compared against the amounts paid in the fiscal quarter. Any additional contributions owed by the county for a fiscal quarter shall be paid before the end of the next fiscal quarter. Any excess contributions by the county may be used to offset amounts owed by the county for the next fiscal quarter.

(c) If the amount or any portion of the amounts owed is not paid by the county before [October 1 and April 1 of each fiscal year.] the dates specified in subsection (a), the director of finance shall retain out of the transient accommodations tax money collected [for the year] a sum equal to the amount or portion thereof not so paid. All the moneys retained and collected by the director of finance shall be deposited in the appropriate fund or funds of the system. The amount of any deficiency in meeting the obligations shall be added to the amount due from the county for the succeeding [year.] quarter.’’

SECTION 17. Section 88-251, Hawaii Revised Statutes, is amended to read as follows:

**“§88-251 Applicability.** The following provisions of part II [~~of this chapter~~] shall apply to this part:

- (1) Subpart A, except the definitions provided in section 88-21, unless expressly adopted in section 88-261;
- (2) Subpart B, except sections 88-45, 88-45.5, 88-46, 88-52, 88-59, 88-59.5, 88-59.6, 88-61, and 88-62[~~, and 88-45-5~~];
- (3) Subpart C, except sections 88-71 to 88-76, 88-79, 88-80, 88-83, 88-84 to 88-85, 88-87 to 88-89, 88-96, 88-97, and 88-98;
- (4) Subpart D, except sections 88-112 and 88-113; and
- (5) Subpart E.’’

SECTION 18. Section 88-261, Hawaii Revised Statutes, is amended to read as follows:

**“§88-261 Definitions.** (a) The following words and phrases as used in this part shall have the same meanings as defined in section 88-21, unless a different meaning is plainly required by the context: “accumulated contributions”; “actuarial equivalent”; “average final compensation”; “beneficiary”; “board”; “county”; “employee”; “medical board”; “retirant”; “retirement allowance”; “service”; and “system”.

(b) The following words and phrases as used in this part shall have the following meanings, unless a different meaning is plainly required by the context:

“Accidental death”: death which is the natural and proximate result of an accident occurring at some definite time and place while the member was in the actual performance of duty, or due to the result of some occupational hazard, and not caused by recklessness on the part of the member.

[~~“Board”: the board of trustees of the employees’ retirement system established by section 88-24.~~]

“Member”: a class C member as described in section 88-47.

“Ordinary death”: death [~~which~~] that is not accidental and [~~which~~] that occurs while in service or on authorized leave without pay.’’

SECTION 19. Section 88-282, Hawaii Revised Statutes, is amended to read as follows:

**“§88-282 Service retirement allowance.** Upon retirement from service, a member shall receive a retirement allowance as follows:

- (1) If the member has met the requirements in section 88-281(a), (b), ~~(d), or (e)~~, a maximum retirement allowance of one and one-fourth per cent of the average final compensation multiplied by the number of years of credited service; or
- (2) If the member has met the requirements in section 88-281(c), an early retirement allowance equal to the maximum retirement allowance reduced by one-half per cent for each month the member is less than age sixty-two at retirement.”

SECTION 20. Section 88-285, Hawaii Revised Statutes, is amended to read as follows:

**“§88-285 Service-connected disability retirement.** A member who would be eligible to receive a service-connected disability retirement allowance pursuant to section 88-79 shall receive a maximum retirement allowance of thirty-five per cent of the member’s average final compensation.”

SECTION 21. Section 88-286, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

**“(d)** Benefits payable under this section shall continue through the end of the last month in which the payee ~~ceases to be~~ is eligible for the benefit.”

SECTION 22. Section 88-311, Hawaii Revised Statutes, is amended by repealing the definition of “board”.

~~[““Board” means the board of trustees of the employees’ retirement system established pursuant to sections 82-83 and 88-24.”]~~

SECTION 23. Section 88-321, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

**“(c)** The following members may not elect to become a class H member under subsection (a):

- (1) Judges, elected officials, and legislative officers;
- (2) Investigators of the department of the attorney general, narcotics enforcement investigators, water safety officers not making the election under section 88-271, prosecuting attorney investigators not making the election under section 88-271, corrections officers not making the election under section 88-271, and public safety investigations staff investigators;
- (3) Police officers and firefighters;
- (4) All employees who were members on July 1, 1957, who elected not to be covered by the Social Security Act; and
- (5) Former class A, B, or C retirees.”

SECTION 24. Section 88-322, Hawaii Revised Statutes, is amended to read as follows:

**“[§88-322] Conversion of previous credited service.** (a) Class C members who are in service on June 30, 2006, and make the election to become class H members pursuant to section 88-321(a), shall have the option to convert some or all

of their class C credited service, as of June 30, 2006, to class H credited service by paying the full actuarial cost of the conversion as of June 30, 2006, in the manner provided in subsection [(e)-] (d). The option to convert class C credited service to class H credited service shall not apply:

- (1) To forfeited credit for previous service not restored as of June 30, 2006; or
- (2) To membership service credit ~~[which]~~ that a member is eligible to claim under section 88-272(4) to (6) as of June 30, 2006, which the member has failed to claim ~~[as of]~~ by June 30, 2006.

(b) All class A and class B credited service of class A or class B members who make the election to become class H members pursuant to section 88-321(a) shall be converted to class H credited service. The cost of the conversion of class A or class B credited service shall be the member's accumulated contributions as of the date of conversion. Verified membership service credit paid for pursuant to section 88-59 under an irrevocable payroll authorization entered into prior to July 1, 2006, shall be credited as class H credited service. Class A and class B members who are in service on June 30, 2006, and make the election to become class H members pursuant to section 88-321(a) shall have the option to convert some or all of their class C credited service, as of June 30, 2006, to class H credited service by paying, in the manner provided in subsection [(e)-] (d), the full actuarial cost of the conversion as of June 30, 2006. The option to convert class C credited service to class H credited service shall not apply:

- (1) To forfeited credit for previous service not restored as of June 30, 2006; or
- (2) To membership service credit ~~[which]~~ that a member is eligible to claim under section 88-272(4) to (6) as of June 30, 2006, which the member has failed to claim ~~[as of]~~ by June 30, 2006.

(c) The election to convert class C credited service to class H credited service shall be made by filing a form with the system ~~[within]~~ not later than one hundred eighty days after publication of the notice required by subsection [(f)-] (e). The board may, by action taken at a meeting held pursuant to chapter 92, extend the deadline for making the election.

~~[(d) Forfeited credit for service as a class A or B member not restored as of the date a class A or B member becomes a class H member and forfeited credit for service as a class C member shall be restored as class C credited service at the rate of one month of service credit for each month of service rendered following the return to membership.~~

~~(e)]~~ (d) The board may permit the cost of conversion of class C credited service to class H credited service pursuant to ~~[subsections]~~ subsection (a) or (b) to be paid by the member in any one of the following methods at the member's option:

- (1) By deductions from the member's compensation pursuant to section 414(h)(2) of the ~~[federal]~~ Internal Revenue Code of 1986, as amended, under the employer pick up plan under section 88-326. An irrevocable payroll authorization filed by the member for a period not to exceed one hundred twenty months shall remain in effect until the completion of the payroll payments or termination of employment, whichever is earlier. The amount of the deductions shall be in an amount sufficient to amortize the actuarial cost of the conversion, together with interest at the rate of eight per cent a year, in level bi-monthly payments over the period specified in the irrevocable authorization. Service credited will be proportional on the basis of whole months. For example, a member electing to convert one hundred twenty months of service over sixty months and terminating after thirty

and one-half months of deductions pursuant to this subsection, will have converted sixty months of class C service to class H service; or

- (2) By lump sum payment.

If the deductions from compensation do not commence, or if the lump sum payment is not paid to the system, within one hundred eighty days after the deadline for making the election to convert class C credited service to class H credited service, the election shall be deemed revoked. The deductions from compensation or lump sum payment shall be paid to the system and shall be credited to the member's individual account and become part of the member's accumulated contributions.

~~[(f)]~~ (e) The option to convert class C credited service to class H credited service pursuant to this section shall be applicable only to the extent that ~~[such]~~ the conversion may be achieved without affecting the eligibility of the system as a qualified plan under section 401(a) of the ~~[federal]~~ Internal Revenue Code of 1986, as amended, or the eligibility of the employer pick up under section 414(h)(2) of the ~~[federal]~~ Internal Revenue Code of 1986, as amended. If the trustees determine that the conditions of the foregoing sentence are satisfied, the system shall publish a statewide notice that class H members who are eligible to convert class C credited service to class H credited service under this section, subject to the provisions of this section, may convert class C credited service to class H credited service.

(f) The actuarial cost of converting a member's class C credited service to class H credited service under subsections (a) and (b) shall be based on the member's actual age in full years as of June 30, 2006, and on the member's monthly base salary or monthly basic rate of pay as of June 30, 2006, exclusive of overtime, differentials, supplementary payments, bonuses, and salary supplements, but including elective salary reduction contributions under sections 125, 403(b), and 457(b) of the Internal Revenue Code of 1986, as amended."

SECTION 25. Section 88-324, Hawaii Revised Statutes, is amended to read as follows:

~~"[§88-324]~~ **Acquisition of membership service.** (a) Under rules as the board may adopt, any class H member may file with the system a statement of all service as an employee or other service paid for by the State or a county rendered prior to the member last becoming a member ~~[which]~~ that is not credited to the member, for which the member claims prior service credit, and also a statement of the services for which the member claims membership service credit and, except as provided in subsection (d) or with respect to service credit paid for pursuant to section 88-59 under an irrevocable payroll authorization entered into prior to July 1, 2006, or to forfeited service to which subsection [(e)] (e) is applicable, for which the member agrees to have additional deductions made from the member's compensation or to make a lump sum payment as described in this section.

~~[Upon timely]~~ After the filing of the statement by the member, the system shall verify the service claimed and determine the service credit allowable.

~~(b) The statement shall be filed no later than the later of the following:~~

- ~~(1) One year following the date the member becomes eligible to claim the prior service credit or membership service credit;~~
- ~~(2) June 30, 2007, if the member was in service on June 30, 2006; or~~
- ~~(3) One year from the date the member first returns to service after June 30, 2006, if the member was not in service on June 30, 2006.~~

~~(e) (b) Except as otherwise provided in subsection (c), (d), or (e), verified membership service[~~, other than forfeited class A, class B, class C, or class H credited service,~~] shall be paid for in any one of the following methods, at the member's option:~~

- (1) By deductions from the member's compensation pursuant to section 414(h)(2) of the Internal Revenue Code of 1986, as amended, under the employer pick up plan under section 88-326. An irrevocable payroll authorization filed by the member for a period not to exceed sixty months shall remain in effect until the completion of the payroll payments or termination of employment, whichever is earlier. The amount of service credit that may be acquired pursuant to this method shall not exceed the period over which the payroll payments are made. The member may elect to have:
  - (A) Deductions from the member's compensation of twice the contribution rate provided for in section 88-325 over a period equal to the period for which membership service credit is allowable not to exceed sixty months; or
  - (B) Deductions from the member's compensation of one and one-half times the contribution rate provided for in section 88-325 over a period equal to twice the period for which membership service credit is allowable, not to exceed sixty months; or
- (2) By lump sum payment of contributions computed at the contribution rate provided for in section 88-325 applied to the member's monthly rate of compensation at the time of payment multiplied by the number of months for which membership service credit is allowable.

~~[The deductions from compensation shall commence, and the lump sum payment shall be made, not later than ninety days from the date the system notifies the member of the amount of service credit allowable.]~~ The deductions from compensation or lump sum payment shall be paid to the system and shall be credited to the member's individual account and become part of the member's accumulated contributions.

Class H membership service credit in addition to any other service credited to the member shall be allowed for the period for which the deductions from compensation or lump sum payment have been made in accordance with this subsection.

(c) Verified membership service for which a former class A or class B member in service on June 30, 2006, was eligible as of June 30, 2006, but failed to claim by June 30, 2006, shall be paid for in any one of the following methods, at the member's option:

- (1) By deductions from the member's compensation pursuant to section 414(h)(2) of the Internal Revenue Code of 1986, as amended, under the employer pick up plan under section 88-326. An irrevocable payroll authorization filed by the member for a period not to exceed sixty months shall remain in effect until the completion of the payroll payments or termination of employment, whichever is earlier. The amount of service credit that may be acquired pursuant to this method shall not exceed the period over which the payroll payments are made. The member may elect to have:
  - (A) Deductions from the member's compensation of twice the contribution rate applicable to the member under section 88-45 as of June 30, 2006, over a period equal to the period for which membership service credit is allowable, not to exceed sixty months; or
  - (B) Deductions from the member's compensation of one and one-half times the contribution rate applicable to the member under section 88-45 as of June 30, 2006, over a period equal to twice

the period for which membership service credit is allowable, not to exceed sixty months; or

- (2) By lump sum payment of contributions computed at the contribution rate applicable to the member under section 88-45 as of June 30, 2006, applied to the member's monthly rate of compensation at the time of payment, multiplied by the number of months for which membership service credit is allowable.

The deductions from compensation or lump sum payment shall be paid to the system and shall be credited to the member's individual account and become part of the member's accumulated contributions.

Class H membership service credit in addition to any other service credited to the member shall be allowed for the period for which the deductions from compensation or lump sum payment have been made in accordance with this subsection.

(d) Verified prior service and verified membership [credit] service for which a former class C member in service on June 30, 2006, was eligible as of June 30, 2006, but failed to claim [prior to the date specified in section 88-322(a) and (b)], by June 30, 2006, shall be credited at no cost as class C credited service.

(e) ~~[Forfeited class]~~ Except as provided in subsection (f):

(1) Class A, class B, or class C credited service shall not be acquired as class H credited service[. Forfeited class]; and

(2) Class A, class B, or class C credited service shall be restored as class C credited service at the rate of one month of service credit for each month of service rendered following the later of conversion to class H membership or the return to membership as a class H member.

Forfeited class H membership service shall not be restored.

(f) Forfeited class A or class B credited service being acquired under an irrevocable payroll authorization entered into under section 88-59 prior to July 1, 2006, shall be credited as class H credited service."

SECTION 26. Section 88-332, Hawaii Revised Statutes, is amended to read as follows:

**"[§88-332] Service retirement allowance.** Upon retirement from service, a class H member shall receive a maximum retirement allowance as follows:

- (1) If the member has met the requirements in section 88-331(a), (b), or (d), a maximum retirement allowance of two per cent of the average final compensation multiplied by the number of years of class H credited service, plus a retirement allowance at the rate of one and one-fourth per cent of the member's average final compensation multiplied by the number of years of class C credited service; or
- (2) If the member has met the requirements in section 88-331(c), an early retirement allowance equal to the maximum retirement allowance calculated as provided in paragraph (1), reduced by 0.4166 per cent for each month the member is less than age sixty-two at retirement."

SECTION 27. Section 88-333, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) Each member, within a reasonable period of time before the member's retirement date, shall be provided a written explanation of:

- (1) The terms and conditions of the various benefit options;
- (2) The rights of the member's spouse or reciprocal beneficiary under subsection ~~[(e)]~~ (e) to be notified of the member's election of a benefit option; and

- (3) The member's right to make, and the effect of, a revocation of an election of a benefit option."

SECTION 28. Section 88-335, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~§88-335] **Ordinary disability retirement allowance.** Upon retirement for ordinary disability, a class H member shall receive [~~an ordinary disability~~] a maximum retirement allowance equal to the higher of either:

- (1) Two per cent of the average final compensation multiplied by the number of years of class H credited service unreduced for age, plus one and one-fourth per cent of the member's average final compensation multiplied by the number of years of class C credited service unreduced for age; or
- (2) Twenty-five per cent of the member's average final compensation."

SECTION 29. Section 88-337, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~§88-337] **Service-connected disability retirement allowance.** Upon retirement for service-connected disability, a class H member shall receive the amount of the member's accumulated contributions and a maximum retirement allowance of thirty-five per cent of the member's average final compensation."

SECTION 30. Section 88-339, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Benefits payable under subsection (a) shall continue through the end of the last month in which the payee [~~ceases to be~~] is eligible for the benefit."

SECTION 31. Section 88-341, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) Any class H member having five or more years of credited service who ceases to be an employee, upon application to the board, shall be paid an amount equal to the former employee's hypothetical account balance and the former employee's membership shall thereupon terminate and all credited service shall be forfeited; provided that [~~any such~~] the individual shall not be paid the individual's hypothetical account balance if either:

- (1) The individual becomes an employee again within fifteen calendar days from the date the individual ceased to be an employee; or
- (2) At the time the application for payment of the individual's hypothetical account balance is received by the board, the individual has become an employee again.

If the contributions are not withdrawn by the former employee after the individual's employment terminates, the former employee shall have vested benefit status and shall be eligible for the service retirement benefit in effect at the time of the former employee's [~~separation from service,~~] retirement, payable in accordance with this chapter.

(c) In case of the death after the termination of service and prior to retirement of any former class H member who has not withdrawn the member's contributions, there shall be paid to the former member's estate or to [~~such~~] the person as the former member has nominated by written designation duly executed and filed with the board if either:

- (1) The former member had less than five years of credited service at the time of death, the former member's accumulated contributions; or



- (2) The former member had five or more years of credited service at the time of death, the former member's hypothetical account balance.''

SECTION 32. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 33. This Act shall take effect on July 1, 2005; provided that section 1 shall take effect retroactive to July 1, 1996, and sections 3 and 19 shall take effect retroactive to July 1, 2004.

(Approved May 17, 2005.)

#### Notes

1. Prior to amendment "§" appeared here.
2. Edited pursuant to HRS §23G-16.5.

## ACT 59

H.B. NO. 164

A Bill for an Act Relating to Unauthorized Motion Picture Recording.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 708, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§708- Unauthorized operation of a recording device in a motion picture theater.** (1) A person commits the offense of unauthorized operation of a recording device in a motion picture theater if the person knowingly operates the audiovisual recording function of any device in a motion picture theater while a motion picture is being exhibited, without the consent of the motion picture theater owner.

(2) This section shall not prevent any lawfully authorized investigative, protective, law enforcement, or intelligence-gathering employee or agent of the local, state, or federal government, from operating any audiovisual recording device in a motion picture theater as part of lawfully authorized investigative, protective, law enforcement, or intelligence-gathering activities.

(3) Unauthorized operation of a recording device in a motion picture theater is a misdemeanor.

(4) For the purposes of this section:

"Audiovisual recording function" means the capability of a device to record or transmit a motion picture or any part thereof by means of any technology.

"Motion picture theater" means a movie theater, screening room, or other venue in use primarily for the exhibition of a motion picture at the time of the offense.''

SECTION 2. Section 663-2, Hawaii Revised Statutes, is amended to read as follows:

**"§663-2 Defense of lawful detention.** In any action for false arrest, false imprisonment, unlawful detention, defamation of character, assault, trespass, or invasion of civil rights, brought by any person by reason of having been detained on or in the immediate vicinity of the premises of a retail mercantile establishment for the purpose of investigation or questioning as to the ownership of any merchandise, or a motion picture theater for the purpose of investigation or questioning as to an unauthorized audiovisual recording of a motion picture, it shall be a defense to the

## ACT 60

action that the person was detained in a reasonable manner and for not more than a reasonable time to permit such investigation or questioning by a police officer or by the owner of the retail mercantile establishment[;] or motion picture theater, the owner's authorized employee, or agent, and that such police officer, owner, employee, or agent had reasonable grounds to believe that the person so detained was committing or attempting to commit larceny of merchandise or unauthorized audiovisual recording of a motion picture on the premises.

As used in this section[; "reasonable grounds"]:

"Motion picture theater" means a movie theater, screening room, or other venue in use primarily for the exhibition of a motion picture at the time of the unauthorized audiovisual recording of a motion picture.

"Reasonable grounds" includes, but is not limited to, knowledge that a person has concealed possession of unpurchased merchandise of the retail mercantile establishment[; and a "reasonable time"] or has made an unauthorized audiovisual recording of a motion picture taken at a motion picture theater.

"Retail mercantile establishment" means a place where goods, wares, or merchandise are offered to the public for sale.

"Reasonable time" means the time necessary to permit the person detained to make a statement or to refuse to make a statement, and the time necessary to examine employees and records of the mercantile establishment or motion picture theater relative to the ownership of the merchandise[;]

~~For the purpose of this section, the term "retail mercantile establishment" means a place where goods, wares, or merchandise are offered to the public for sale.] or making of an unauthorized audiovisual recording of a motion picture.~~

~~This section applies to legal actions resulting from detentions occurring after May 21, 1967[;], for retail merchant establishments, and after the effective date of this Act, for motion picture theaters."~~

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect upon its approval.

(Approved May 18, 2005.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 60

S.B. NO. 834

A Bill for an Act Relating to Conformity of the Hawaii Income Tax Law to the Internal Revenue Code.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to comply with section 235-2.5, Hawaii Revised Statutes, which mandates that the department of taxation submit a bill to each regular session of the legislature that amends Hawaii income tax law to conform with changes to the Internal Revenue Code.

SECTION 2. Section 235-2.3, Hawaii Revised Statutes, is amended to read as follows:

**“§235-2.3 Conformance to the federal Internal Revenue Code; general application.** (a) For all taxable years beginning after December 31, [2003,] 2004, as used in this chapter “Internal Revenue Code” means subtitle A, chapter 1 of the federal Internal Revenue Code of 1986, as amended as of December 31, [2003,] 2004, as it applies to the determination of gross income, adjusted gross income, ordinary income and loss, and taxable income except those provisions of the Internal Revenue Code and federal public laws which pursuant to this chapter do not apply or are otherwise limited in application[.] and except for the provisions of Public Law 109-001 which apply to section 170 of the Internal Revenue Code. The provisions of Public Law 109-001 to accelerate the deduction for charitable cash contributions for the relief of victims of the 2004 Indian Ocean tsunami are applicable for the calendar year that ended December 31, 2004, and the calendar year ending December 31, 2005.

Sections 235-2, 235-2.1, and 235-2.2 shall continue to be used to determine:

- (1) The basis of property, if a taxpayer first determined the basis of property in a taxable year to which such sections apply, and if such determination was made before January 1, 1978; and
- (2) Gross income, adjusted gross income, ordinary income and loss, and taxable income for a taxable year to which such sections apply where such taxable year begins before January 1, 1978.

(b) The following Internal Revenue Code subchapters, parts of subchapters, sections, subsections, and parts of subsections shall not be operative for the purposes of this chapter, unless otherwise provided:

- (1) Subchapter A (sections 1 to 59A) (with respect to determination of tax liability), except section [1(h)(3)] 1(h)(2) (relating to net capital gain reduced by the amount taken into account as investment income), except sections 2(a), 2(b), and 2(c) (with respect to the definition of “surviving spouse” and “head of household”), except section 41 (with respect to the credit for increasing research activities), except section 42 (with respect to low-income housing credit), and except sections 47 and 48, as amended, as of December 31, 1984 (with respect to certain depreciable tangible personal property). For treatment, see sections 235-110.91, 235-110.7, and 235-110.8;
- (2) Section 78 (with respect to dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit);
- (3) Section 86 (with respect to social security and tier 1 railroad retirement benefits);
- (4) Section 103 (with respect to interest on state and local bonds). For treatment, see section 235-7(b);
- (5) Section 114 (with respect to extraterritorial income)[;]. For treatment, any transaction as specified in the transitional rule for 2005 and 2006 as specified in the American Jobs Creation Act of 2004 section 101(d) and any transaction that has occurred pursuant to a binding contract as specified in the American Jobs Creation Act of 2004 section 101(f) are inoperative;
- (6) Section 120 (with respect to amounts received under qualified group legal services plans). For treatment, see section 235-7(a)(9) to (11);
- (7) Section 122 (with respect to certain reduced uniformed services retirement pay). For treatment, see section 235-7(a)(3);

- (8) Section 135 (with respect to income from United States savings bonds used to pay higher education tuition and fees). For treatment, see section 235-7(a)(1);
- (9) Subchapter B (sections 141 to 150) (with respect to tax exemption requirements for state and local bonds);
- (10) Section 151 (with respect to allowance of deductions for personal exemptions). For treatment, see section 235-54;
- (11) Section 179B (with respect to expensing of capital costs incurred in complying with environmental protection agency sulphur regulations);
- (12) Section 181 (with respect to special rules for certain film and television productions);
- ~~[(11)]~~ (13) Section 196 (with respect to deduction for certain unused investment credits);
- (14) Section 199 (with respect to the U.S. production activities deduction);
- ~~[(12)]~~ (15) Section 222 (with respect to qualified tuition and related expenses);
- ~~[(13)]~~ (16) Sections 241 to 247 (with respect to special deductions for corporations). For treatment, see section 235-7(c);
- ~~[(14)]~~ (17) Section 280C (with respect to certain expenses for which credits are allowable). For treatment, see section 235-110.91;
- ~~[(15)]~~ (18) Section 291 (with respect to special rules relating to corporate preference items);
- ~~[(16)]~~ (19) Section 367 (with respect to foreign corporations);
- ~~[(17)]~~ (20) Section 501(c)(12), (15), (16) (with respect to exempt organizations);
- ~~[(18)]~~ (21) Section 515 (with respect to taxes of foreign countries and possessions of the United States);
- ~~[(19)]~~ (22) Subchapter G (sections 531 to 565) (with respect to corporations used to avoid income tax on shareholders);
- ~~[(20)]~~ (23) Subchapter H (sections 581 to 597) (with respect to banking institutions), except section 584 (with respect to common trust funds). For treatment, see chapter 241;
- ~~[(21)]~~ (24) Section 642(a) and (b) (with respect to special rules for credits and deductions applicable to trusts). For treatment, see sections 235-54(b) and 235-55;
- ~~[(22)]~~ (25) Section 646 (with respect to tax treatment of electing Alaska Native settlement trusts);
- ~~[(23)]~~ (26) Section 668 (with respect to interest charge on accumulation distributions from foreign trusts);
- ~~[(24)]~~ (27) Subchapter L (sections 801 to 848) (with respect to insurance companies). For treatment, see sections 431:7-202 and 431:7-204;
- ~~[(25)]~~ (28) Section 853 (with respect to foreign tax credit allowed to shareholders). For treatment, see section 235-55;
- ~~[(26)]~~ (29) Subchapter N (sections 861 to 999) (with respect to tax based on income from sources within or without the United States), except sections 985 to 989 (with respect to foreign currency transactions). For treatment, see sections 235-4, 235-5, and 235-7(b), and 235-55;
- ~~[(27)]~~ (30) Section 1042(g) (with respect to sales of stock in agricultural refiners and processors to eligible farm cooperatives);
- ~~[(28)]~~ (31) Section 1055 (with respect to redeemable ground rents);
- ~~[(29)]~~ (32) Section 1057 (with respect to election to treat transfer to foreign trust, etc., as taxable exchange);
- ~~[(30)]~~ (33) Sections 1291 to 1298 (with respect to treatment of passive foreign investment companies);

- [(31)] (34) Subchapter Q (sections 1311 to 1351) (with respect to readjustment of tax between years and special limitations);
- (35) Subchapter R (sections 1352 to 1359) (with respect to election to determine corporate tax on certain international shipping activities using per ton rate);
- [(32)] (36) Subchapter U (sections 1391 to 1397F) (with respect to designation and treatment of empowerment zones, enterprise communities, and rural development investment areas). For treatment, see chapter 209E; and
- [(33)] (37) Subchapter W (sections 1400 to 1400C) (with respect to District of Columbia enterprise zone).”

SECTION 3. Section 235-2.4, Hawaii Revised Statutes, is amended by amending subsections (f) and (g) to read as follows:

“(f) Section 168 (with respect to the accelerated cost recovery system) of the Internal Revenue Code shall be operative for purposes of this chapter, except that provisions relating to property on Indian reservations in section 168(j) and special allowance for certain property acquired after September 10, 2001, and before [September 11, 2004, (including the increase and extension of such special allowance to January 1, 2005)] January 1, 2005 (including the extension of the qualifying aircraft placed in service before January 1, 2006), in section 168(k) shall not be operative for purposes of this chapter.

(g) Section 179 (with respect to the election to expense certain depreciable business assets) of the Internal Revenue Code shall be operative for purposes of this chapter, except that provisions relating to:

- (1) The increase of the maximum deduction to \$100,000 for taxable years beginning after 2002 and before [2006] 2008 in section 179(b)(1);
- (2) The increase of the qualifying investment amount to \$400,000 for taxable years beginning after 2002 and before [2006] 2008 in section 179(b)(2);
- (3) Defining section 179 property to include computer software in section 179(d)(1);
- (4) Inflation adjustments in section 179(b)(5); and
- (5) Irrevocable election in section 179(c)(2);

shall not be operative for the purposes of this chapter.”

SECTION 4. Section 235-2.45, Hawaii Revised Statutes, is amended to read as follows:

“**§235-2.45 Operation of certain Internal Revenue Code provisions; sections 641 to 7518.** (a) Section 641 (with respect to imposition of tax) of the Internal Revenue Code shall be operative for the purposes of this chapter subject to the following:

- (1) The deduction for exemptions shall be allowed as provided in section 235-54(b);
- (2) The deduction for contributions and gifts in determining taxable income shall be limited to the amount allowed in the case of an individual, unless the contributions and gifts are to be used exclusively in the State; and
- (3) The tax imposed by section 1(e) of the Internal Revenue Code as applied by section 641 of the Internal Revenue Code is hereby imposed by this chapter at the rate and amount as determined under section 235-51 on estates and trusts.

(b) Section 667 (with respect to treatment of amounts deemed distributed by trusts in preceding years) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter; except that the reference to tax-exempt interest to which section 103 of the Internal Revenue Code applies in section 667(a) of the Internal Revenue Code shall instead be a reference to tax-exempt interest to which section 235-7(b) applies.

(c) Section 685 (with respect to treatment of qualified funeral trusts) of the Internal Revenue Code shall be operative for purposes of this chapter, except that the tax imposed under this chapter shall be computed at the tax rates provided under section 235-51, and no deduction for the exemption amount provided in section 235-54(b) shall be allowed. The cost-of-living adjustment determined under section 1(f)(3) of the Internal Revenue Code shall be operative for the purpose of applying section 685(c)(3) under this chapter.

~~[(d) Section 704 of the Internal Revenue Code (with respect to a partner's distributive share) shall be operative for purposes of this chapter; except that section 704(b)(2) shall not apply to allocations of low-income housing tax credits among partners under section 235-110.8.]~~

~~[(e)]~~ (d) Section 704 of the Internal Revenue Code (with respect to a partner's distributive share) shall be operative for purposes of this chapter; except that section 704(b)(2) shall not apply to:

- (1) Allocations of the high technology business investment tax credit allowed by section 235-110.9;
- (2) Allocations of net operating loss pursuant to section 235-111.5; ~~[(e)]~~
- (3) Allocations of the attractions and educational facilities tax credit allowed by section 235-110.46~~[-];~~ or
- (4) Allocations of low-income housing tax credits among partners under section 235-110.8.

~~[(f)]~~ (e) Section 1212 (with respect to capital loss carrybacks and carryforwards) of the Internal Revenue Code shall be operative for the purposes of this chapter; except that for the purposes of this chapter the capital loss carryback provisions of section 1212 shall not be operative and the capital loss carryforward allowed by section 1212(a) shall be limited to five years; except for a qualified high technology business as defined in section 235-7.3, which shall be limited to fifteen years.

~~[(g)]~~ (f) Subchapter S (sections 1361 to 1379) (with respect to tax treatment of S corporations and their shareholders) of chapter 1 of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in part VII.

~~[(h)]~~ (g) Section 6015 (with respect to relief from joint and several liability on joint return) of the Internal Revenue Code is operative for purposes of this chapter.

(h) Sections 6103(i)(3)(C) and 6103(i)(7) (with respect to disclosures of information to the United States Justice Department or appropriate federal or state law enforcement agency for purposes of investigating terrorist incidents, threats, or activities, and for analyzing intelligence concerning investigating terrorist incidents, threats, or activities) of the Internal Revenue Code shall be operative for the purposes of this chapter.

(i) Subchapter C (sections 6221 to 6233) (with respect to tax treatment of partnership items) of chapter 63 of the Internal Revenue Code shall be operative for the purposes of this chapter.

(j) Subchapter D (sections 6240 to 6255) (with respect to simplified audit procedures for electing large partnerships) of the Internal Revenue Code shall be operative for the purposes of this chapter, with due regard to chapter 232 relating to tax appeals.

(k) Section 6511(h) (with respect to running of periods of limitation suspended while taxpayer is unable to manage financial affairs due to disability) of the Internal Revenue Code shall be operative for purposes of this chapter, with due regard to section 235-111 relating to the limitation period for assessment, levy, collection, or credit.

(l) Section 7518 (with respect to capital construction fund for commercial fishers) of the Internal Revenue Code shall be operative for the purposes of this chapter. Qualified withdrawals for the acquisition, construction, or reconstruction of any qualified asset that is attributable to deposits made before the effective date of this section shall not reduce the basis of the asset when withdrawn. Qualified withdrawals shall be treated on a first-in-first-out basis.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act, upon its approval, shall apply to taxable years beginning after December 31, 2004, except as otherwise provided in this Act.

(Approved May 19, 2005.)

## ACT 61

H.B. NO. 1666

A Bill for an Act Relating to State Funds.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to transfer security positions, employees, and authority from the department of public safety to the Hawaii health systems corporation. This transfer shall not impact the Hawaii health systems corporation’s ability and authority to use private contractors at hospitals under its jurisdiction.

SECTION 2. Section 26-14.6, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

“(i) Effective January 1, 1993, the functions and authority heretofore exercised by the director of health and the department of health relating to uniformed security employees and security contracts at various state hospitals throughout the State shall be transferred to the department of public safety. Effective July 1, 2005, the functions, authority, and employee positions of the department of public safety relating to uniformed security employees and security contracts at health facilities that are under the operation, management, and control of the Hawaii health systems corporation shall be transferred to the Hawaii health systems corporation.”

SECTION 3. All rights, powers, functions, and duties of the department of public safety relating to uniformed security employees and security contracts at health facilities that are under the operation, management, and control of the Hawaii health systems corporation are transferred to the Hawaii health systems corporation.

All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

No officer or employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act, and such officer or employee may be

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transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed; and provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

An officer or employee of the State who does not have tenure and who may be transferred or appointed to a civil service position as a consequence of this Act shall become a civil service employee without the loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges and without the necessity of examination; provided that such officer or employee possesses the minimum qualifications for the position to which transferred or appointed.

If an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department or the governor.

SECTION 4. All appropriations, records, equipment, files, supplies, contracts, books, papers, documents, maps, computer software and data, authorizations, and other property, both real and personal, heretofore made, used, acquired, or held by the department of public safety in the exercise of the functions and programs transferred by this Act shall be transferred to the Hawaii health systems corporation along with the functions or programs.

SECTION 5. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2005.

(Approved May 19, 2005.)

## ACT 62

H.B. NO. 99

A Bill for an Act Relating to Business.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to transfer the business action center and its functions from the department of business, economic development and tourism to the department of commerce and consumer affairs.

SECTION 2. The Hawaii Revised Statutes is amended by adding to title 26 a new chapter to be appropriately designated and to read as follows:

### **“CHAPTER BUSINESS ACTION CENTER**

§ -1 **Definitions.** For purposes of this chapter, unless the context clearly requires otherwise:

“Applicant” means any person acting on the person’s own behalf or who is authorized to act on behalf of any other person for the purpose of securing required permits to engage in business activities in the state.

“Center” means the business action center established in section -2.

“Department” means the department of commerce and consumer affairs.



“Director” means the director of commerce and consumer affairs.

“Permit” means any license, certificate, registration, or any other form of authorization required by a federal, state, or county department or agency to engage in any business activity, excluding vocational and professional occupational licenses, certificates, or registration and environmental permits.

“Person” means any individual, proprietorship, partnership, association, cooperative, corporation, nonprofit organization, and any other organization required to obtain one or more permits for the conduct of its business activities.

“State agency” means any department, board, bureau, commission, division, office, council, or agency of the State, a public benefit corporation, or public authority having at least one member appointed by the governor.

**§ -2 Business action center established; staff.** (a) There is established within the department a business action center that shall provide information and services to coordinate, simplify, and expedite permit application processing for persons engaged in or intending to engage in business activities in the state. The center shall assist in the development of neighbor island operations that deliver similar services. The center shall also serve as an information clearinghouse that makes available to any person general information about state and federal laws and rules, county ordinances and rules, and financial assistance programs related to business activities.

(b) The center shall be headed by a supervisor who shall be appointed by the director without regard to chapter 76 and shall serve at the director’s pleasure. The director may employ such other personnel as are required to carry out the functions of the center under this chapter.

**§ -3 General functions; powers and duties.** The center shall have the following functions, powers, and duties:

- (1) Accept permit and license applications and associated fees on behalf of participating agencies in accordance with agreements reached with these agencies;
- (2) Provide comprehensive information on permits and licenses required for business activities in the state;
- (3) Facilitate contacts between the applicant and state agencies with permit and license functions;
- (4) Research, compile, and maintain a file of state and federal laws and rules and county ordinances and rules applicable to the various business activities for which permits and licenses are required, including but not limited to laws relating to employer requirements in such areas as state taxes, workers’ compensation, and unemployment insurance;
- (5) Research, compile, and maintain a file of various financial assistance programs available for business activities in the state;
- (6) Encourage and facilitate the cooperation and participation of federal and county government agencies in permit and license coordination;
- (7) Promote and publicize the center’s services to the public, and provide information on its services for inclusion in any public informational material for permits and licenses provided by a state agency;
- (8) Make recommendations to state agencies for eliminating, consolidating, simplifying, expediting, or otherwise improving permit and license procedures affecting business activities;
- (9) Adopt rules, procedures, instructions, and forms as are necessary to carry out the functions, powers, and duties of the center; and

- (10) Accept credit card payments and facsimile or digitized signatures for business permit, license, or registration filing fees, as authorized by the issuing agency.

**§ -4 Cooperation from state agencies.** (a) The director may request and shall be entitled to receive from any state agency, such assistance, services, facilities, and data the director deems necessary to carry out the duties of the center.

(b) Each state agency with permit or license issuance functions covered under this chapter shall cooperate with the center by designating a staff person to coordinate the agency's efforts to provide information to the center on its permit or license process and, to the extent possible, by providing a prompt response to requests for expediting permit or license applications or for information.

(c) The director shall be entitled to obtain personnel on a loaned basis from those agencies that issue permits or licenses to businesses, including but not limited to the department of business, economic development and tourism, department of taxation, and department of labor and industrial relations. The director may assign these loaned personnel to the center.

**§ -5 Comprehensive permit and license information file.** (a) Each state agency that is required to review, approve, or grant permits or licenses for business activities shall report to the center on a form prescribed by the center, each and every type of review, approval, license, and permit administered by that agency. Application forms, applicable agency rules, and the estimated time period necessary for application consideration based on experience and statutory or administrative rule requirements shall accompany each state agency report.

(b) Subsequent to the filing of the report, the state agency shall submit reports to the center on any new requirement or modifications to existing requirements together with applicable forms, rules, and other information required to be filed in the initial report. Upon receipt of those reports, the center shall establish and maintain a comprehensive information file that provides ready access to the most current information provided by the state agencies.

**§ -6 Immunity from liability.** The opinions offered and the services rendered by the center under this chapter shall be considered facilitative in nature and the center shall not be liable for any consequences resulting from an applicant's failure to obtain a required permit or license. Any information provided by the center or any omission of information by the center shall not relieve any applicant from, or constitute a waiver of, the obligation to secure a required permit or license.

**§ -7 Compilation of statistical data; annual report.** (a) The center shall obtain and keep, on an annual basis, appropriate statistical data regarding:

- (1) The number of permits, licenses, and registrations issued by state agencies;
- (2) The amount of time involved in processing the permits, licenses, and registrations;
- (3) The types of activities for which permits and licenses have been issued;
- (4) A geographic distribution of the permits and licenses issued; and
- (5) Other pertinent data the director deems necessary for analysis for future planning purposes.

(b) The department shall submit an annual report to the governor and the legislature that shall include a description of the operations of the center, summaries and analyses of statistical data compiled, and recommendations for any administrative or statutory changes required to further the purposes of this chapter."

SECTION 3. Chapter 201D, Hawaii Revised Statutes, is repealed.

SECTION 4. (a) All positions, except the position of supervisor, assigned to the business action center as of the effective date of this Act that are exempt from civil service shall be replaced by civil service positions within one calendar year from the effective date of the Act.

(b) An employee who occupies an exempt position at the time it is replaced by a civil service position shall be entitled to compete for appointment to the civil service position that replaces the employee's exempt position through an internal recruitment conducted by the department of commerce and consumer affairs; provided that the employee has occupied the exempt position for a minimum of one year prior to the effective date of this Act and the employee meets all applicable requirements for the position.

(c) If the employee is appointed to the replacement civil service position:

- (1) The employee's compensation shall be determined according to the applicable collective bargaining or executive order positions covering exempt employees who are appointed to replacement civil service positions; and
- (2) There shall be no break in service and the appointment of the employee shall be consistent with initial probation appointments to civil service positions.

(d) Notwithstanding any other law to the contrary, as of the effective date of this Act and until the date that all exempt positions are replaced by civil service positions pursuant to this section, the director may employ such personnel as are required to carry out the functions of the business action center established by section 2 of this Act, without regard to chapter 76.

SECTION 5. All rules, policies, procedures, guidelines, and other material adopted or developed by the department of business, economic development and tourism to implement provisions of the Hawaii Revised Statutes that are reenacted or made applicable to the department of commerce and consumer affairs by this Act, shall remain in full force and effect until amended or repealed by the department of commerce and consumer affairs pursuant to chapter 91, Hawaii Revised Statutes. In the interim, every reference to the department of business, economic development and tourism in those rules, policies, procedures, guidelines, and other material is amended to refer to the department of commerce and consumer affairs or director of commerce and consumer affairs as appropriate.

SECTION 6. All contracts, agreements, or other documents executed or entered into by or on behalf of the department of business, economic development and tourism pursuant to the provisions of the Hawaii Revised Statutes, which are reenacted or made applicable to the department of commerce and consumer affairs by this Act, shall remain in full force and effect. Effective upon approval of this Act, every reference to the department of business, economic development, and tourism therein shall be construed as a reference to the department of commerce and consumer affairs or the director of commerce and consumer affairs as appropriate.

SECTION 7. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the department of business, economic development and tourism relating to the functions transferred to the department of commerce and consumer affairs shall be transferred with functions to which they relate.

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SECTION 8. All funds appropriated for fiscal biennium 2005-2007, directly or indirectly, relating to functions, programs, or organizational segments transferred under this Act shall be appropriately transferred to the department of commerce and consumer affairs with the functions, programs, or segments to which they relate.

SECTION 9. This Act shall take effect on July 1, 2005.

(Approved May 19, 2005.)

## ACT 63

H.B. NO. 1154

A Bill for an Act Relating to Agriculture.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 328, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

### **“PART . HOME-BASED AGRICULTURALLY PRODUCED HONEY**

**§328- Home-based agricultural producer of honey; exemption.** A home-based agricultural producer of honey shall not be required to process honey in a certified honey house or food processing establishment, or be required to obtain a permit from the department of health, if the producer:

- (1) Sells less than fifty gallons of honey a year;
- (2) Sells the honey directly to consumers; and
- (3) Labels each container of honey sold with:
  - (A) The name and address of the producer;
  - (B) The net weight and volume of the honey, by standard measure;
  - (C) The date the honey was produced; and
  - (D) The statement, “This product is home-produced and processed.” in clear and conspicuous print.

**§328- Home-based agricultural producer of honey; inspections.** If the department receives a consumer complaint about a home-based agricultural producer of honey, the producer shall be subject to food sampling and subsequent inspection of its premises to determine if the producer’s products are misbranded or adulterated.”

SECTION 2. This Act shall take effect upon its approval.

(Approved May 19, 2005.)

## ACT 64

S.B. NO. 956

A Bill for an Act Relating to Agricultural Inspections.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. In 2003, the legislature passed Act 85, Regular Session of 2003 (Act 85), establishing the Hawaii Invasive Species Council (HISC). Act 85 declared that “the silent invasion of Hawaii by alien invasive species is the single greatest

threat to Hawaii's economy, natural environment, and the health and lifestyle of Hawaii's people and visitors.' In its 2004 report, HISC identified tasks to be undertaken to address the problem of invasive species. One of the recommendations involved a reprioritization of inspection and quarantine services for goods imported into the state based on data provided by the Kahului Airport Risk Assessment. Imported commodities that are considered high risk for pests should receive the level of attention necessary to protect Hawaii from pests, regardless of their point of origin or means of transportation.

The purpose of this Act is to allow the department of agriculture to adopt rules that require identification of specific articles on negotiable and non-negotiable warehouse receipts, bills of lading, or other documents of title for inspection of pests.

SECTION 2. Section 150A-5, Hawaii Revised Statutes, is amended to read as follows:

**“§150A-5 Conditions of importation.** The importation into the State of any of the following articles, viz., nursery-stock, tree, shrub, herb, vine, cut-flower, cutting, graft, scion, bud, seed, leaf, root, or rhizome; nut, fruit, or vegetable; grain, cereal, or legume in the natural or raw state; moss, hay, straw, dry-grass, or other forage; unmanufactured log, limb, or timber, or any other plant-growth or plant-product, unprocessed or in the raw state; soil; microorganisms; live bird, reptile, nematode, insect, or any other animal in any stage of development (that is in addition to the so-called domestic animal, the quarantine of which is provided for in chapter 142); box, vehicle, baggage, or any other container in which such articles have been transported or any packing material used in connection therewith shall be made in the manner hereinafter set forth:

- (1) Notification of arrival. Any person who receives for transport or brings or causes to be brought to the State as freight, air freight, baggage, or otherwise, for the purpose of debarkation or entry therein, or as ship's stores, any of the foregoing articles, shall, immediately upon the arrival thereof, notify the department, in writing, of the arrival, giving the waybill number, container number, name and address of the consignor, name and address of the consignee or the consignee's agent in the State, marks, number of packages, description of contents of each package, port at which laden, and any other information that may be necessary to locate or identify the same, and shall hold such articles at the pier, airport, or any other place where they are first received or discharged, in such a manner that they will not spread or be likely to spread any infestation or infection of insects or diseases that may be present until inspection and examination can be made by the inspector to determine whether or not any article, or any portion thereof, is infested or infected with or contains any pest. The department may adopt rules to require identification of specific articles on negotiable and non-negotiable warehouse receipts, bills of lading, or other documents of title for inspection of pests. In addition, the department ~~[by]~~ shall adopt rules ~~[shall]~~ to designate restricted articles that shall require ~~[a]~~:
  - (A) A permit from the department in advance of importation ~~[and shall designate other articles that shall require a]; or~~
  - (B) A department letter of authorization or registration in advance of importation.

The restricted articles shall include but not be limited to certain microorganisms or living insects. Failure to obtain the permit, letter of authorization, or registration in advance is a violation of this section;

- (2) Individual passengers, officers, and crew.

- (A) It shall be the responsibility of the transportation company to distribute, prior to the debarkation of passengers and baggage, the State of Hawaii plant and animal declaration form to each passenger, officer, and crew member of any aircraft or vessel originating in the continental United States or its possessions or from any other area not under the jurisdiction of the appropriate federal agency in order that the passenger, officer, or crew member can comply with the directions and requirements appearing thereon. All passengers, officers, and crew members, whether or not they are bringing or causing to be brought for entry into the State the articles listed on the form, shall complete the declaration, except that one adult member of a family may complete the declaration for other family members. Any person who defaces the declaration form required under this section, gives false information, fails to declare restricted articles in the person's possession or baggage, or fails to declare in cargo manifests is in violation of this section;
  - (B) Completed forms shall be collected by the transportation company and be delivered, immediately upon arrival, to the inspector at the first airport or seaport of arrival. Failure to distribute or collect declaration forms or to immediately deliver completed forms is a violation of this section; and
  - (C) It shall be the responsibility of the officers and crew of an aircraft or vessel originating in the continental United States or its possessions or from any other area not under the jurisdiction of the appropriate federal agency to immediately report all sightings of any plants and animals to the plant quarantine branch. Failure to comply with this requirement is a violation of this section;
- (3) Plant and animal declaration form. The form shall include directions for declaring domestic and other animals cited in chapter 142, in addition to the articles enumerated in this chapter;
  - (4) Labels. Each container in which any of the above-mentioned articles are imported into the State shall be plainly and legibly marked, in a conspicuous manner and place, with the name and address of the shipper or owner forwarding or shipping the same, the name or mark of the person to whom the same is forwarded or shipped or the person's agent, the name of the country, state, or territory and locality therein where the product was grown or produced, and a statement of the contents of the container. Upon failure to comply with this paragraph, the importer or carrier is in violation of this section;
  - (5) Authority to inspect. Whenever the inspector has good cause to believe that the provisions of this chapter are being violated, the inspector may:
    - (A) Enter and inspect any aircraft, vessel, or other carrier at any time after its arrival within the boundaries of the State, whether offshore, at the pier, or at the airport, for the purpose of determining whether any of the articles or pests enumerated in this chapter or rules adopted thereto, is present;
    - (B) Enter into or upon any pier, warehouse, airport, or any other place in the State where any of the above-mentioned articles are moved or stored, for the purpose of ascertaining, by inspection and examination, whether or not any of the articles is infested or infected with any pest or disease or contaminated with soil or contains prohibited plants or animals; and

- (C) Inspect any baggage or personal effects of disembarking passengers, officers, and crew members on aircraft or vessels arriving in the State to ascertain if they contain any of the articles or pests enumerated in this chapter. No baggage or other personal effects of the passengers or crew members shall be released until the baggage or effects have been passed.

Baggage or cargo inspection shall be made at the discretion of the inspector, on the pier, vessel, or aircraft or in any quarantine or inspection area.

Whenever the inspector has good cause to believe that the provisions of this chapter are being violated, the inspector may require that any box, package, suitcase, or any other container carried as ship's stores, cargo, or otherwise by any vessel or aircraft moving between the continental United States and Hawaii or between the Hawaiian Islands, be opened for inspection to determine whether any article or pest prohibited by this chapter or by rules adopted pursuant thereto is present. It is a violation of this section if any prohibited article or any pest or any plant, fruit, or vegetable infested with plant pests is found;

- (6) Request for importation and inspection. In addition to requirements of the United States customs authorities concerning invoices or other formalities incident to importations into the State, the importer shall be required to file a written statement with the department, signed by the importer or the importer's agent, setting forth the importer's desire to import certain of the above-mentioned articles into the State and:

(A) Giving the following additional information:

- (i) The kind (scientific name), quantity, and description;
- (ii) The locality where same were grown or produced;
- (iii) Certification that all animals to be imported are the progeny of captive populations or have been held in captivity for a period of one year immediately prior to importation or have been specifically approved for importation by the board;
- (iv) The port from which the same were last shipped;
- (v) The name of the shipper; and
- (vi) The name of the consignee; and

(B) Containing:

- (i) A request that the department, by its duly authorized agent, examine the articles described;
- (ii) An agreement by the importer to be responsible for all costs, charges, or expenses; and
- (iii) A waiver of all claims for damages incident to the inspection or the fumigation, disinfection, quarantine, or destruction of the articles, or any of them, as hereinafter provided, if any treatment is deemed necessary.

Failure or refusal to file a statement, including the agreement and waiver, is a violation of this section and may, in the discretion of the department, be sufficient cause for refusing to permit the entry of the articles into the State;

- (7) Place of inspection. If, in the judgment of the inspector, it is deemed necessary or advisable to move any of the above-mentioned articles, or any portion thereof, to a place more suitable for inspection than the pier, airport, or any other place where they are first received or discharged, the inspector is authorized to do so. All costs and expenses incident to the movement and transportation of the articles to such place shall be borne by the importer or the importer's agent. If the

importer, importer's agent, or transportation company [{}requests{}] inspection of sealed containers of the above-mentioned articles at locations other than where the articles are first received or discharged and the department determines that inspection at such place is appropriate, the department may require payment of costs necessitated by these inspections, including overtime costs;

- (8) Disinfection or quarantine. If, upon inspection, any article received or brought into the State for the purpose of debarkation or entry therein is found to be infested or infected or there is reasonable cause to presume that it is infested or infected and the infestation or infection can, in the judgment of the inspector, be eradicated, a treatment shall be given such article. The treatment shall be at the expense of the owner or the owner's agent, and the treatment shall be as prescribed by the department. The article shall be held in quarantine at the expense of the owner or the owner's agent at a satisfactory place approved by the department for a sufficient length of time to determine that eradication has been accomplished. If the infestation or infection is of such nature or extent that it cannot be effectively and completely eradicated, or if it is a potentially destructive pest or it is not widespread in the State, or after treatment it is determined that the infestation or infection is not completely eradicated, or if the owner or the owner's agent refuses to allow the article to be treated or to be responsible for the cost of treatment and quarantine, the article, or any portion thereof, together with all packing and containers, may, at the discretion of the inspector, be destroyed or sent out of the State at the expense of the owner or the owner's agent. Such destruction or exclusion shall not be made the basis of a claim against the department or the inspector for damage or loss incurred;
- (9) Disposition. Upon completion of inspection, either at the time of arrival or at any time thereafter should any article be held for inspection, treatment, or quarantine, the inspector shall affix to the article or the container or to the delivery order in a conspicuous place thereon, a tag, label, or stamp to indicate that the article has been inspected and passed. This action shall constitute a permit to bring the article into the State; and
- (10) Ports of entry. None of the articles mentioned in this section shall be allowed entry into the State except through the airports and seaports in the State designated and approved by the board.'

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 19, 2005.)

**ACT 65**

S.B. NO. 1170

A Bill for an Act Relating to Electronic Commerce.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that electronic commerce criminal activity is growing at an alarming rate. According to Gartner, a market-research firm in



Stamford, Connecticut, banks and credit card issuers lost an estimated \$1,200,000,000 to “phishing” scams last year.

According to the Federal Trade Commission, the federal agency that tracks electronic commerce-based crime, in phishing scams, Internet scammers try to get information, such as credit card numbers, passwords, account information, or other personal information, by convincing Internet users to divulge the information under false pretenses.

The “phishers” send millions of bogus electronic mails that appear to come from popular websites or from sites Internet users trust, like a bank or credit card company.

The electronic mails and website links that phishers send often look official enough to trick people into believing that the sites are legitimate. To make the electronic mails look more real, scam artists might put a link in the fake electronic mail that appears to go to a legitimate website, but actually takes an unsuspecting Internet user to a scam site or pop-up window that looks exactly like the official site.

According to the chairperson of the Hawaii Financial Security Association, although an electronic commerce-based crime such as phishing is a major concern for financial institutions, it is a crime that impacts all industries.

By sending phony electronic mails to thousands of electronic mailboxes, cyber crooks hope to lure victims to a fraudulent (or spoofed) website where the Internet user would be tricked into divulging personal information, such as passwords and account numbers. According to *Kiplinger’s Magazine*, an Anti-Phishing Working Group, whose members include banks, Internet service providers, and technology vendors, recorded one thousand one hundred forty-two phishing sites in October, 2004, and says that spoofed sites are multiplying at a rate of twenty-five per cent per month. The working group estimates that up to five per cent of recipients respond to phishing electronic mails, leaving them vulnerable to credit-card fraud and identity theft.

The purpose of this Act is to convene a Hawaii anti-phishing task force to develop state policy on how best to prevent further occurrences of phishing and other forms of electronic commerce-based crimes in the State.

SECTION 2. (a) There is established within the department of the attorney general a Hawaii anti-phishing task force to examine options to prevent electronic commerce-based crimes in the State.

(b) The Hawaii anti-phishing task force shall include members as follows:

- (1) The attorney general or the attorney general’s designee;
- (2) The director of the office of consumer protection;
- (3) The United States Attorney for the District of Hawaii or the United States Attorney’s designee;
- (4) Two members of the Hawaii state senate appointed by the president of the senate;
- (5) Two members of the Hawaii state house of representatives appointed by the speaker of the house of representatives;
- (6) Two members representing the financial services industry, one appointed by the president of the senate and one appointed by the speaker of the house of representatives;
- (7) A member of the Honolulu police department’s criminal investigation division; and
- (8) A member of the Honolulu field office’s United States Secret Service electronic crimes unit.

(c) The task force shall:

- (1) Examine the policies, procedures, and operations of state agencies charged with the responsibility of developing policies to prevent electronic commerce-based crimes, monitoring electronic commerce-based criminal activity, and enforcing electronic commerce-based criminal sanctions;

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- (2) Review other jurisdictions' activities, policies, directives, and laws related to preventing electronic commerce-based crimes and derive best practices models therefrom;
  - (3) Explore any other options available to the task force to deter electronic commerce-based crimes from occurring in the State; and
  - (4) Establish findings and develop recommendations on how the State may best deter electronic commerce-based crimes from occurring in the State.
- (d) The task force shall submit its findings and recommendations to the legislature, including any proposed legislation, no later than twenty days prior to the convening of the 2006 regular session.
- (e) The department of the attorney general shall provide support services necessary to assist the task force in achieving its purpose as required under this Act.
- (f) The task force shall cease to exist on June 30, 2006.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 19, 2005.)

ACT 66

S.B. NO. 76

A Bill for an Act Relating to Traffic Violations.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 291-37, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person guilty of omitting any of the required acts, or committing any of the prohibited acts of [~~this chapter,~~] sections 291-2 to 291-33, or the rules adopted shall be guilty of a violation of this chapter and shall be fined not less than \$25 nor more than \$1,800[; ~~provided that any~~].

Any person guilty of omitting any of the required acts, or committing any of the prohibited acts of [sections] section 291-34, 291-35, or 291-36 shall be fined [not more than \$600 and not less than the fine which is set forth in the] in accordance with the following tables:

| If the excess weight is: | The [ <del>minimum</del> ] fine for a first violation shall be: |
|--------------------------|---|
| 100 to 1,500 pounds      | \$125   |
| 1,501 to 2,000 pounds    | 130   |
| 2,001 to 2,500 pounds    | 140   |
| 2,501 to 3,000 pounds    | 160   |
| 3,001 to 3,500 pounds    | 180   |
| 3,501 to 4,000 pounds    | 200   |
| 4,001 to 4,500 pounds    | 225   |
| 4,501 to 5,000 pounds    | 250   |
| 5,001 to 5,500 pounds    | 275   |
| 5,501 to 6,000 pounds    | 300   |
| 6,001 to 6,500 pounds    | 330   |
| 6,501 to 7,000 pounds    | 360   |
| 7,001 to 7,500 pounds    | 390   |
| 7,501 to 8,000 pounds    | 420   |
| 8,001 to 8,500 pounds    | 455   |
| 8,501 to 9,000 pounds    | 490   |

|                                |                              |
|--------------------------------|------------------------------|
| If the excess weight is:       | The [minimum] fine for a     |
|                                | first violation shall be:    |
| 9,001 to 9,500 pounds          | 525                          |
| 9,501 to 10,000 pounds         | 560                          |
| 10,001 pounds and over         | 580                          |
| If the excess dimension is:    | The [minimum] fine shall be: |
| Up to 5 feet                   | \$ 25                        |
| Over 5 feet and up to 10 feet  | 50                           |
| Over 10 feet and up to 15 feet | 75                           |
| Over 15 feet                   | 100                          |

For the purpose of the imposition of a fine or penalty herein, evidence of prior offenses shall be admissible.

For a second violation within one year of the first, the fine for excess weight shall be not less than twice the fine listed in the excess weight table above and not more than \$1,200. For a third or subsequent violation for excess weight previously cited under this section within one year, the fine shall not be less than triple the fine listed in the excess weight table above and not more than \$1,800.

For the purposes of this section, "person" means the driver of the vehicle unless the driver is an employee in the scope and course of employment, in which case "person" means the employer of the driver. In the case of the transportation of a sealed container or transportation by flatrack, "person" means:

- (1) The individual or company the cargo is consigned to; or
- (2) The individual or company located in the State shipping the cargo.

The consignee or the shipper shall not be cited if the power units' drive axle group is overweight, and the weight is not more than that allowed for a tandem axle with any applicable tolerances.

All penalties imposed and collected for violations of sections 291-33 to 291-36 shall be paid into the state highway fund.

The department of transportation is authorized to institute a system where the [minimum] fine, based on the tables in this subsection, may be mailed in when the citation or penalty is not to be contested. This system shall include an ability for the owner of the vehicle or combination of vehicles to request the operator be held harmless and the citation be transferred to that owner of the vehicle or combination of vehicles."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 23, 2005.)

**ACT 67**

H.B. NO. 390

A Bill for an Act Relating to Rental Motor Vehicle Surcharge Tax.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 251-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is levied and shall be assessed and collected each month a rental motor vehicle surcharge tax of \$2 a day, except that for the period of September 1,

## ACT 68

1999, to August 31, 2007, the tax shall be \$3 a day, or any portion of a day that a rental motor vehicle is rented or leased. The rental motor vehicle surcharge tax shall be levied upon the lessor; provided that the tax shall not be levied on the lessor [during the period September 1, 1999, to August 31, 2007,] if:

- (1) The lessor is renting the vehicle to replace a vehicle of the lessee that is being repaired; and
- (2) The repair order for the vehicle is retained by the lessor for four years for verification purposes.”

SECTION 2. Statutory material to be repealed is bracketed and stricken.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 23, 2005.)

## ACT 68

H.B. NO. 852

A Bill for an Act Relating to Permit Approvals.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 91-13.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[E]§91-13.5~~ **Maximum time period for business or development-related permits, licenses, or approvals; automatic approval; extensions.** (a) Unless otherwise provided by law, an agency shall adopt rules that specify a maximum time period to grant or deny a business or development-related permit, license, or approval; provided that the application is not subject to state administered permit programs delegated, authorized, or approved under federal law.

(b) All such issuing agencies shall clearly articulate informational requirements for applications and review applications for completeness in a timely manner.

(c) All such issuing agencies shall take action to grant or deny any application for a business or development-related permit, license, or approval within the established maximum period of time, or the application shall be deemed approved~~[-];~~ provided that a delay in granting or denying an application caused by the lack of quorum at a regular meeting of the issuing agency shall not result in approval under this subsection; provided further that any subsequent lack of quorum at a regular meeting of the issuing agency that delays the same matter shall not give cause for further extension, unless an extension is agreed to by all parties.

(d) The maximum period of time established pursuant to this section shall be extended in the event of a national disaster, state emergency, or union strike, which would prevent the applicant, the agency, or the department from fulfilling application or review requirements.

(e) This section shall not apply to any proceedings of the public utilities commission.

~~[(e)]~~ (f) For purposes of this section, “application for a business or development-related permit, license, or approval” means any state or county application, petition, permit, license, certificate, or any other form of a request for approval required by law to be obtained prior to the formation, operation, or expansion of a commercial or industrial enterprise, or for any permit, license, certificate, or any form of approval required under sections 46-4, 46-4.2, 46-4.5, 46-5, and chapters 183C,

205, 205A, 340A, 340B, 340E, 340F, 342B, 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, and 342P.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 23, 2005.)

## ACT 69

H.B. NO. 606

A Bill for an Act Relating to Standards for Net Metered Renewable Energy Systems.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Hawaii’s abundant renewable energy resources are widely distributed and often available where energy is needed. On-site power generation using renewable energy sources can reduce demand for centralized, oil-fired power generation and can provide energy diversification and energy security for Hawaii’s residents, businesses, and government agencies.

Accordingly, the purpose of this Act is to lessen Hawaii’s future dependence on imported oil and encourage the greater use of renewable energy by removing impediments to the installation of customer-sited renewable energy systems.

SECTION 2. Section 269-111, Hawaii Revised Statutes, is amended to read as follows:

**“§269-111 Safety and performance standards. (a)** A solar, wind turbine, biomass, or hydroelectric energy generating system, or a hybrid system consisting of two or more of these facilities, used by an eligible customer-generator shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as the Underwriters Laboratories and, where applicable, rules of the public utilities commission regarding safety and reliability.

**(b)** For systems of ten kilowatts or less, an eligible customer-generator whose solar, wind turbine, biomass, or hydroelectric energy generating system, or whose hybrid system consisting of two or more of these facilities, meets ~~[those]~~ the standards and rules under subsection (a) shall not be required to install additional controls, perform or pay for additional tests, or purchase additional liability insurance.

**(c)** For eligible customer-generator systems of greater than ten kilowatts, the commission, either through decision and order, by tariff adoption, or by rule, shall:

- (1)** Set forth safety, performance, and reliability standards and requirements; and
- (2)** Establish the qualifications for exemption from a requirement to install additional controls, perform or pay for additional tests, or purchase additional liability insurance.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 23, 2005.)

A Bill for an Act Relating to Public School Substitute Teachers.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 302A-624, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

~~“(e) Effective [July 1, 1996, the per diem rate or rates<sup>1</sup> for substitute teachers shall be based on the annual entry step salary rate established for a Class II teacher on the most current teachers’ salary schedule. The] July 1, 2005, the minimum hourly or minimum per diem rate for substitute teachers shall be [derived from the annual rate in accordance with the following formula:~~

$$\text{Per Diem Rate} = \text{Annual Salary Rate} \div 12 \text{ months} \div 21 \\ \text{Average Working Days Per Month}]$$

determined by the legislature; provided that the department shall develop a classification and compensation schedule that is not restricted to the minimum compensation rates but may exceed them; provided further that any individual in class I, II or III who works less than a full seven-hour work day shall be compensated on a prorated, hourly basis as follows:

- (1) Class I: other individuals who do not possess a bachelor’s degree shall be compensated at a rate of not less than \$119.80 for a full work day;
- (2) Class II: individuals with a bachelor’s degree shall be compensated at a rate of not less than \$130 for a full work day; and
- (3) Class III: department of education teachers, or licensed or highly qualified teachers, shall be compensated at a rate of not less than \$140 for a full work day.”

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000, or so much thereof as may be necessary for fiscal year 2005-2006, and the same sum, or so much thereof as may be necessary for fiscal year 2006-2007, for possible compensation adjustments for public school substitute teachers beginning on July 1, 2005.

The sum appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 3. The department shall submit its findings and recommendations, including the classification and compensation schedule as well<sup>1</sup> any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2006.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2005.

(Approved May 23, 2005.)

**Note**

1. So in original.

## ACT 71

H.B. NO. 843

A Bill for an Act Relating to School Lunch.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to allow the department of education to set the price of school lunch at up to one-half of the total cost of operating the school food services program.

SECTION 2. Section 302A-405, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The price for the school lunch shall be set by the department to ensure that moneys received from the sale of the lunches [shall] may be up to [~~one-third~~] one-half of the cost of preparing the school lunch[, ~~rounded to the nearest twenty-five cents, adjusted during the first year of the fiscal biennium~~]. The price for the school lunch shall be based on the average cost of preparing the school lunch over the three years preceding [~~the second year of the fiscal biennium;~~] any increase; provided that the department by rule shall provide a lower rate or free lunches to children based on their economic need.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2005.

(Approved May 23, 2005.)

## ACT 72

H.B. NO. 150

A Bill for an Act Relating to Driver Licensing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 286, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§286- Provisional license for persons under the age of eighteen.** (a) A person may be granted a provisional license to drive passenger cars of any gross vehicle weight rating, buses designed to transport fifteen or fewer occupants, and trucks and vans having a gross vehicle weight rating of fifteen thousand pounds or less if the person:

- (1) Is at least sixteen years of age but under the age of eighteen;
- (2) Holds an instruction permit and has held the permit for a period of at least one hundred eighty days and there is no pending proceeding that might result in the suspension or revocation of the instruction permit; and
- (3) Satisfactorily completes all requirements of sections 286-108 and 286-109.

(b) The provisional license shall entitle the provisional licensee to drive the class of motor vehicles specified in subsection (a) upon the roadways of the State; provided that:

- (1) The provisional licensee shall have the provisional license in the provisional licensee's immediate possession while driving;
- (2) All occupants of the motor vehicle shall be restrained by safety belts or a child passenger restraint system as required under sections 291-11.5 and 291-11.6;
- (3) The provisional licensee shall not transport more than one person under the age of eighteen, unless the person is, with respect to the provisional licensee:
  - (A) A household member; or
  - (B) A household member's foster or hanai child, without being accompanied and supervised by a licensed driver who is the provisional licensee's parent or guardian; and
- (4) Except as provided in subsection (c), whenever the provisional licensee is driving between the hours of 11:00 p.m. and 5:00 a.m., a licensed driver who is the provisional licensee's parent or guardian and is licensed to operate the same category of motor vehicle as the licensee, shall be in the motor vehicle and shall occupy the passenger seat beside the licensee.
  - (c) A provisional licensee may drive between the hours of 11:00 p.m. and 5:00 a.m. without a licensed parent or guardian in the motor vehicle under the following conditions:
    - (1) The provisional licensee is traveling to or from the provisional licensee's place of employment, operation of the motor vehicle is necessary for this purpose, and the provisional licensee keeps in the provisional licensee's possession a signed statement from the employer containing the employer's name, address, telephone number, and verification of employment and work hours; or
    - (2) The provisional licensee is traveling to or from a school-authorized activity of the provisional licensee, operation of a motor vehicle is necessary for this purpose, and the provisional licensee keeps in the provisional licensee's possession a signed statement from a parent or guardian containing the parent's or guardian's name, address, and telephone number, and verification that operation of the motor vehicle by the provisional licensee is necessary to travel to or from the school-authorized activity;

provided that the provisional licensee shall not transport more than one person under the age of eighteen between the hours of 11:00 p.m. and 5:00 a.m. without being accompanied and supervised by a licensed driver who is the provisional licensee's parent or guardian.

- (d) If the provisional licensee violates any of the requirements of subsection (b) or (c):
  - (1) For a first violation of any requirement, the provisional license shall be suspended for a period of three months by a district court or family court judge. If the person's provisional license is suspended, the person shall not be eligible for reissuance of the provisional license or issuance of a driver's license until:
    - (A) The person is eighteen years of age; or
    - (B) Three months have elapsed since the date of suspension, whichever is sooner, and the person has otherwise satisfied the requirements of this chapter; and
  - (2) For a second or any subsequent violation of any requirement, the provisional license shall be revoked for six months by a district court or family court judge. If the person's provisional license is revoked, the



person shall not be eligible for reissuance of the provisional license or issuance of a driver's license until:

(A) The person is eighteen years of age; or

(B) Six months have elapsed since the date of revocation, whichever is sooner, and the person has otherwise satisfied the requirements of this chapter.

(e) If the provisional licensee is convicted of an offense relating to the operation of a motor vehicle other than the requirements of subsection (b) or (c):

(1) For a first conviction, the provisional license shall be suspended or revoked by a district court or family court judge, in addition to any other penalties that may be prescribed by law. If the person's provisional license is suspended or revoked, the person shall not be eligible for reissuance of the provisional license or issuance of a driver's license until:

(A) The person is eighteen years of age; or

(B) Six months have elapsed since the date of suspension or revocation,

whichever is sooner, and the person has otherwise satisfied the requirements of this chapter; and

(2) For a second or any subsequent conviction, the provisional license shall be revoked for one year by a district court or family court judge, in addition to any other penalties that may be prescribed by law. If the person's provisional license is revoked, the person shall not be eligible for reissuance of the provisional license or issuance of a driver's license until:

(A) The person is eighteen years of age; or

(B) One year has elapsed since the date of revocation, whichever is later, and the person has otherwise satisfied the requirements of this chapter.

(f) A provisional licensee may be issued a driver's license in accordance with this chapter if the provisional licensee:

(1) Has satisfactorily held a provisional license for at least six months;

(2) Has no pending proceeding that might result in the suspension or revocation of the license;

(3) Is at least seventeen years of age; and

(4) Has satisfactorily complied with all requirements of this chapter.

(g) If not suspended or revoked, the provisional license shall expire on the date of the provisional licensee's nineteenth birthday.

(h) The fee for a provisional license shall be set in accordance with section 286-111.

(i) This section shall not apply to the licensing of:

(1) An emancipated minor; and

(2) Motorcycle or motor scooter drivers.

(j) For the purposes of this section, "household member" shall have the same meaning as defined in section 291E-1."

SECTION 2. Section 286-102, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No person, except one exempted under section 286-105, one who holds an instruction permit under section 286-110, one who holds a provisional license under section 286-, one who holds a commercial driver's license issued under section 286-239, or one who holds a commercial driver's license instruction permit issued under section 286-236, shall operate any category of motor vehicles listed in

this section without first being appropriately examined and duly licensed as a qualified driver of that category of motor vehicles.”

SECTION 3. Section 286-104, Hawaii Revised Statutes, is amended to read as follows:

“**§286-104 What persons shall not be licensed.** The examiner of drivers shall not issue any license hereunder:

- (1) To any person whose license has been suspended by a court of competent jurisdiction during the suspension period[;], nor to any person whose license has been revoked until the expiration of one year after the date of the revocation, or until the expiration of the period of revocation specified by law, whichever is greater[;], except as provided under sections 286- (d) and 286- (e) for suspensions and revocations of a provisional license; nor to any person who, while unlicensed, has within two years been convicted of operating a vehicle under the influence of an intoxicant or, prior to January 1, 2002, of driving under the influence of alcohol or drugs;
- (2) To any person who is required by this part to take an examination, unless [sueh] the person has successfully passed the examination;
- (3) To any person who is required under the motor vehicle financial responsibility laws of this State to deposit proof of financial responsibility and who has not deposited [sueh] the proof;
- (4) To any person [when] who the examiner of drivers has good cause to believe [that such person by reason of physical or mental disability] would not be able to operate a motor vehicle with safety upon the highways[;] by reason of physical or mental disability;
- (5) To any person who is under eighteen years of age; provided that [a]:
  - (A) A person who is fifteen years and six months of age may be granted an instruction permit; [and provided further that a]
  - (B) A person who is at least sixteen [to seventeen] and less than eighteen years of age may be granted a provisional license upon satisfying the requirements of section 286- ;
  - (C) A person who is at least seventeen and less than eighteen years of age may be granted a license upon satisfying the requirements of [sections 286-108 and 286-109,] section 286- , which license [shall be valid for four years and] may be suspended or revoked by a judge having jurisdiction over the holder of the license. Upon revocation of the license, the person shall not be eligible to operate a motor vehicle on the highway until the person is eighteen years of age and has again satisfied the requirements of sections 286-108 and 286-109; or
  - (D) A person who is an emancipated minor may be granted a license upon satisfaction of all requirements of this chapter applicable to persons eighteen years of age or older; or
- (6) To any person who is not in compliance with section 286-102.5.

Any person denied a license under this or any other section of this part shall have a right of appeal as provided in section 286-129.”

SECTION 4. Section 286-106, Hawaii Revised Statutes, is amended to read as follows:

“**§286-106 Expiration of licenses.** Every driver’s license issued under this part, except for a provisional license issued under section 286- which shall expire

on the date of the provisional licensee's nineteenth birthday, whether an original issuance or a renewal, shall expire on the first birthday of the licensee occurring not less than six years after the date of the issuance of the license, unless sooner revoked or suspended; provided that the license shall expire ~~on the first birthday of the licensee occurring not less than four years after the date of issuance of the license if the licensee is fifteen to seventeen years of age and~~ two years after the date of the issuance of the license if at that time the licensee:

- (1) Is seventy-two years of age or older; or
- (2) Exhibits a physical condition or conditions ~~[which]~~ that the examiner of drivers reasonably believes has impaired the driver's ability to drive, unless the licensee:
  - (A) Obtains a certificate from a licensed physician that the licensee's physical condition or conditions do not impair the licensee's ability to drive; or
  - (B) Is able to correct the physical impairment, or is able to drive safely by using a vehicle adapted to overcome the physical impairment ~~[is]~~ to the satisfaction of the examiner of drivers ~~[able to drive safely].~~

SECTION 5. Section 286-108, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The examiner of drivers shall require proof from every applicant under the age of eighteen that the applicant has completed a driver education program and a behind-the-wheel driver training course certified by the director of transportation. The examiner of drivers shall not examine any applicant for a [driver's] provisional license who is sixteen through seventeen years of age unless the applicant holds and has held a valid instruction permit under section 286-110, for a period of no fewer than [ninety] one hundred eighty days. If the applicant's instruction permit has expired and a new instruction permit was issued within thirty days of its expiration, the examiner of drivers may examine the applicant without requiring an additional [ninety-day period.] one hundred eighty day period."

SECTION 6. Section 286-110, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Except when operating a motor scooter or motorcycle, the holder of [a temporary] an instruction permit shall be accompanied by a person who is [eighteen] twenty-one years of age or older and licensed to operate the category of motor vehicles in which the motor vehicle [which] that is being operated belongs. The licensed person shall occupy a passenger seat [as near] beside the permit holder [as is practical] while the motor vehicle is being [so] operated[.]; provided that if the holder of the instruction permit is under the age of eighteen years and is driving between the hours of 11:00 p.m. and 5:00 a.m.:

- (1) A licensed driver who is the permit holder's parent or guardian shall occupy a passenger seat beside the driver while the motor vehicle is operated, unless the permit holder is an emancipated minor;
- (2) The licensed driver shall be licensed to operate the same category of motor vehicles as the motor vehicle being operated by the holder of the instruction permit; and
- (3) All occupants of the motor vehicle shall be restrained by a seat belt assembly or a child passenger safety restraint system as required under sections 291-11.5 and 291-11.6, notwithstanding any other law to the contrary."

SECTION 7. Section 286-111, Hawaii Revised Statutes, is amended as follows:

1. By amending the title to read:

**“§286-111 Application for license, provisional license, or instruction permit; fees.”**

2. By amending subsection (a) to read:

“(a) Every application for an instruction permit, provisional license, or [for a] driver’s license shall be made upon a form furnished by the examiner of drivers and shall be verified by the applicant before a person authorized to administer oaths. The examiner of drivers and officers serving under the examiner may administer [such] the oaths without charge. Each application for an instruction permit for a category (1), (2), (3), or (4) license shall be accompanied by a fee to be determined by the council of each county and each application for a provisional license or driver’s license shall be accompanied by the fee, unless the applicant has already paid the fee upon application for an instruction permit in the same county, in which event no fee shall be [chargeable.] charged. An additional fee to be determined by the council of each county shall be charged and collected upon the issuance of a provisional license or driver’s license. All of the foregoing fees shall become county realizations.”

SECTION 8. Section 286-112, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The application of any person under the age of eighteen years for an instruction permit, provisional license, or driver’s license shall be signed and verified before a person authorized to administer oaths by the appropriate one of the following:

- (1) If both the father and mother of the applicant have custody of the applicant, by both the father and mother of the applicant; [or]
- (2) If only one parent has custody of the applicant, by the custodial parent; [or]
- (3) If neither parent has custody of the applicant, and the applicant has a custodial guardian or has custodial guardians, by the custodial guardian or by all the custodial guardians; or
- (4) If neither parent has custody of the applicant, and the applicant has no custodial guardian, by an employer of the applicant or by any responsible person who is willing to assume the obligation imposed under this part upon a person signing the application of a minor.

(b) Any negligence or misconduct of a minor under the age of eighteen years when driving a motor vehicle upon a highway shall be imputed to the person who has signed the application of the minor for a permit, provisional license, or license, which person shall be jointly and severally liable with the minor for any damages caused by [such] the minor’s negligence or misconduct.”

SECTION 9. Section 286-113, Hawaii Revised Statutes, is amended to read as follows:

**“§286-113 Release from liability.** Any person who has signed the application of a minor for an instruction permit, provisional license, or driver’s license may file with the examiner of drivers a verified written request that the permit, provisional license, or license of the minor be canceled, together with the permit, provisional license, or license issued. Upon receipt of the request, the examiner of drivers shall cancel the permit, provisional license, or license of the minor and the

person who [has] signed the application of the minor shall be relieved from the liability imposed under this part ~~[on account of]~~ for any subsequent negligence or ~~[willful]~~ wilful misconduct of the minor in operating a motor vehicle. Nothing herein shall be construed to limit the liability of parents for the torts of their child as provided in chapter 577.”

SECTION 10. Section 286-114, Hawaii Revised Statutes, is amended to read as follows:

**“§286-114 Revocation of license, provisional license, or instruction permit upon death of person signing minor’s application.** The examiner of drivers upon receipt of satisfactory evidence of the death of a person who signed the application of a minor for an instruction permit, provisional license, or a license shall cancel the permit, provisional license, or license and shall not issue a new permit, provisional license, or license until ~~[such time as]~~ a new application duly signed and verified ~~[shall be]~~ is made as required by this part. Upon ~~[cancelling]~~ canceled the permit, provisional license, or license, the examiner of drivers shall notify the minor to surrender the permit, provisional license, or license. If the death occurs after the minor has reached majority, this section shall not apply.”

SECTION 11. Section 286-117, Hawaii Revised Statutes, is amended to read as follows:

**“§286-117 Duplicate permits, provisional licenses, and licenses.** The holder of an instruction permit, provisional license, or driver’s license may upon payment of the reasonable cost of its issuance obtain a duplicate; provided that the holder shall surrender the original permit, provisional license, or license or furnish satisfactory proof of loss or destruction of the same.

The chief of police or a police officer shall notify a holder that the holder’s permit, provisional license, or license is illegible and that the holder shall within ten days surrender the holder’s permit, provisional license, or license and apply for a duplicate. Upon failure to comply with a notice to surrender an illegible permit, provisional license, or license and apply for a duplicate, the person to whom the permit or license is issued shall be subject to the ~~[punishment]~~ penalties in section 286-136.”

SECTION 12. (a) The department of transportation and the department of health shall compile and analyze all relevant traffic and accident data, including but not limited to accident reports, crash data, and data relating to injuries and fatalities relating to motor vehicle accidents to determine the effectiveness of the graduated provisional licensing program in reducing traffic fatalities and accidents in the State.

(b) This report shall be submitted to the legislature no later than twenty days before the convening of each regular session while this graduated provisional licensing program remains in effect.

SECTION 13. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 15. This Act shall take effect on January 9, 2006; provided that on January 9, 2011, this Act shall be repealed and sections 286-102, 286-104, 286-106,

## ACT 73

286-108, 286-110, 286-111, 286-112, 286-113, 286-114, and 286-117, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act.

(Approved May 25, 2005.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 73

H.B. NO. 438

A Bill for an Act Relating to Traffic Offenses.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 291C-13, Hawaii Revised Statutes, is amended to read as follows:

“~~[§291C-13]~~ **Accidents involving damage to vehicle or property.** The driver of any vehicle involved in an accident resulting only in damage to a vehicle or other property ~~[which]~~ that is driven or attended by any person shall immediately stop such vehicle at the scene of the accident or as close thereto as possible, but shall forthwith return to, and in every event shall remain at, the scene of the accident until the driver has fulfilled the requirements of section 291C-14. Every such stop shall be made without obstructing traffic more than is necessary. ~~[Any person failing to stop or to comply with the requirements of this section under such circumstances shall be fined not more than \$100 or imprisoned not more than ten days for a first conviction; fined not more than \$200 or imprisoned not more than twenty days, or both, for a second conviction within one year of a first conviction; and fined not more than \$500 or imprisoned not more than six months, or both, for a third conviction within one year of a first conviction].~~”

SECTION 2. Section 291C-18, Hawaii Revised Statutes, is amended to read as follows:

“~~[§291C-18]~~ **False reports.** ~~[Any]~~ No person ~~[who gives]~~ shall give information in oral or written reports as required in this part or in chapter 287 knowing or having reason to believe that such information is false ~~[shall be fined not more than \$1,000 or imprisoned not more than one year, or both].~~”

SECTION 3. Section 291C-72, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) ~~[When traffic control signals are not in place or not in operation the]~~ The driver of a vehicle shall stop and yield the right of way, ~~[slowing down or stopping if need be to so yield,]~~ to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved May 25, 2005.)

## ACT 74

H.B. NO. 502

A Bill for an Act Relating to Traffic Offenses Requiring Imposition of Increased Penalties for Subsequent Offenses.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 291-11.5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Violation of this section shall be considered an offense as defined under section 701-107(5) and shall subject the violator to the following penalties:

- (1) For a first conviction, the person shall:
  - (A) Be fined not more than \$100;
  - (B) Be required by the court to attend a child passenger restraint system safety class conducted by the division of driver education; provided that:
    - (i) The class may include video conferences as determined by the administrator of the division of driver education as an alternative method of education; and
    - (ii) The class shall not exceed four hours;
  - (C) Pay a \$50 driver education assessment as provided in section 286G-3; and
  - (D) Pay a \$10 surcharge to be deposited into the neurotrauma special fund;
- (2) For a conviction of a second offense~~;~~ committed within three years of any other conviction under this section, the person shall:
  - (A) Be fined not less than \$100 but not more than \$200;
  - (B) Be required by the court to attend a child passenger restraint system safety class not to exceed four hours in length conducted by the division of driver education if the person has not previously attended such a class;
  - (C) Pay a \$50 driver education assessment as provided in section 286G-3 if the person has not previously attended a child passenger restraint system safety class conducted by the division of driver education; and
  - (D) Pay a \$10 surcharge to be deposited into the neurotrauma special fund; and
- (3) For a conviction of a third or subsequent offense~~;~~ committed within three years of any other conviction under this section, the person shall:
  - (A) Be fined not less than \$200 but not more than \$500;
  - (B) Be required by the court to attend a child passenger restraint system safety class not to exceed four hours in length conducted by the division of driver education if the person has not previously attended such a class;
  - (C) Pay a \$50 driver education assessment as provided in section 286G-3 if the person has not previously attended a child passen-

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- ger restraint system safety class conducted by the division of driver education; and
- (D) Pay a \$10 surcharge to be deposited into the neurotrauma special fund.”

SECTION 2. Section 291-24.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If a motor vehicle alarm system installed in a motor vehicle is activated and emits a sound for more than five continuous minutes, the registered owner of the motor vehicle shall be fined not more than \$100; provided that after the third violation[;] within a five-year period, the fine shall be:

- (1) \$250 for the fourth violation;
- (2) \$375 for the fifth violation; and
- (3) \$500 for a sixth or subsequent violation.”

SECTION 3. Section 291-32, Hawaii Revised Statutes, is amended to read as follows:

“**§291-32 Penalties.** (a) The use or operation of any motor vehicle not equipped with lights in conformity with sections 291-25 to 291-31 upon the public highways is prohibited during the period specified in section 291-25(a).

(b) Whoever violates any of the provisions of this section, or of sections 291-25 to 291-31, shall be fined not more than \$10. Each violation shall be deemed a separate offense, and a subsequent violation of the same provision within a one-year period shall be subject to twice the fine imposed upon the prior conviction therefor.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved May 25, 2005.)

## ACT 75

H.B. NO. 1555

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds for Hualalai Academy.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 2. Pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$30,000,000, in one or more series, for the purpose of assisting Hualalai Academy, a Hawaii corporation, to finance the planning, acquisition, construction, and improve-



ment of its educational facilities. The legislature finds and determines that the planning, acquisition, construction, and improvement of Hualalai Academy's educational facilities constitutes a project as defined in part VIII, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities serving the general public.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities serving the general public.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2010, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The special purpose revenue bonds issued under this Act may be issued in one or more series for a single project, multiple projects, a single-project party, or multiple-project parties pursuant to the authority of this Act or the combined authority of this Act and any one or more other separate acts of the legislature pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, and the department may combine into a single issue of special purpose revenue bonds, in one or more series, two or more proposed issues of special purpose revenue bonds to be issued pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, separately authorized, in the total amount not to exceed the aggregate of the proposed separate issues of special purpose revenue bonds.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2010.

SECTION 7. This Act shall take effect on July 1, 2005.

(Approved May 26, 2005.)

## ACT 76

S.B. NO. 1483

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds for Waimea Country School.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public's health, safety, and general welfare.

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SECTION 2. Pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$10,000,000, in one or more series, for the purpose of assisting Waimea Country School to finance and refinance the planning, acquisition, construction, and improvement of facilities in the State of Hawaii. The legislature hereby finds and determines that the planning, acquisition, construction, or improvement facilities of Waimea Country School constitute a project as defined in part VIII, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to a not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities that serve the general public.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities that serve the general public.

SECTION 4. The special purpose revenue bonds issued under this Act may be issued in one or more series for a single project, multiple projects, a single-project party, or multiple-project parties pursuant to the authority of this Act or the combined authority of this Act and any one or more other separate acts of the legislature pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, and the department of budget and finance may combine into a single issue of special purpose revenue bonds, in one or more series, two or more proposed issues of special purpose revenue bonds to be issued pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, separately authorized, in the total amount not to exceed the aggregate of the proposed separate issues of special purpose revenue bonds.

SECTION 5. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2010, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2010.

SECTION 7. This Act shall take effect on July 1, 2005.

(Approved May 26, 2005.)

## ACT 77

S.B. NO. 459

A Bill for an Act Relating to Special Purpose Revenue Bonds.

*Be It Enacted by the Legislature of the State of Hawaii:*

## Part I

SECTION 1. Section 39A-31, Hawaii Revised Statutes, is amended by amending the definitions of “health care facility”, “facility”, or “project” and “project agreement” to read as follows:

““Health care facility”, “facility”, or “project” means any facility for each single project or multiproject program of a project party and includes any structure or building suitable for use as a hospital, clinic, nursing home, home for the aged or infirm, or other health care facility; laboratory; laundry; nurses’ or intern<sup>1</sup> residences; administration building; research facility; maintenance, storage, or utility facility; auditorium; dining hall; food service and preparation facility; mental or physical health care facility; dental care facility; nursing school; medical or dental school or teaching facility; mental or physical health facilities related to any such structure or facility; equipment; software; or any other structure, [øf] facility,<sup>2</sup> equipment, or software required or useful for the operation of a health care facility, including, but not limited to, offices, parking lots and garages, and other supporting service structures and all necessary, useful, and related equipment, furnishings, and appurtenances and including the acquisition, preparation, and development of all real and personal property necessary or convenient as a site or sites for any such structure or facility, and including the refinancing of outstanding obligations of a project party relating to any of the foregoing. “Health care facility”, “facility”, or “project” does not include any property used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship or any property used or to be used primarily in connection with any part of a program of a school or department of divinity of any religious denomination.

“Project agreement” means any agreement entered into under this part by the department with a project party providing for the issuance of special purpose revenue bonds to finance facilities of a project party or for a project party or to loan the proceeds of [sueh] the bonds to assist not-for-profit corporations that provide health care facilities to the general public, including without limitation any loan agreement[-], lease, sublease, conditional sale agreement, or other similar financing contract or agreement, or any combination thereof, entered into by the department with a project party and, where necessary or appropriate, with a lender, lessor, or other third party.”

## Part II

SECTION 2. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 3. Pursuant to part II, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$30,000,000, in one or more series for the purpose of assisting Hawaii Pacific Health, a nonprofit corporation, the obligated group in which Hawaii Pacific Health is a member, and one or more of its not-for-profit affiliates, in financing, refinancing, and reimbursing costs related to the acquisition or construction of health care facilities (including, without

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limitation, costs related to the acquisition or the acquisition and installation of information technology, equipment, software, and other related projects for Hawaii Pacific Health and any one or more of its not-for-profit affiliates). The legislature finds and determines that the activities and facilities of Hawaii Pacific Health and its affiliates constitute projects as defined in part II, chapter 39A, Hawaii Revised Statutes, and that the financing thereof constitutes assistance to health care facilities.

SECTION 4. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part II, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist not-for-profit corporations that provide health care facilities to the general public.

SECTION 5. The department of budget and finance is authorized, from time to time, including times subsequent to April 30, 2010, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 3 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 3. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on April 30, 2010.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved May 26, 2005.)

### Notes

1. Prior to amendment "interns' " appeared here.
2. Comma should be underscored.

## ACT 78

S.B. NO. 1117

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Utilities Serving the General Public.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 2. Pursuant to part VI, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$160,000,000, in one or more series:

- (1) \$100,000,000 of which shall be for the purpose of assisting Hawaiian Electric Company, Inc.;
- (2) \$20,000,000 of which shall be for the purpose of assisting Maui Electric Company, Limited; and
- (3) \$40,000,000 of which shall be for the purpose of assisting Hawaii Electric Light Company, Inc.;

all Hawaii corporations, to continue multi-project capital improvement programs, including the acquisition of land, facilities used to produce electricity, transmission and distribution facilities, and other electric systems and facilities, or any combination thereof; provided that public utilities commission approval shall be required for any project financed by the issuance of special purpose revenue bonds under this Act.

The legislature hereby finds and determines that capital improvement programs by Hawaiian Electric Company, Inc., Maui Electric Company, Limited, and Hawaii Electric Light Company, Inc., constitute energy projects as defined in part VI, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to utilities serving the general public in providing electric energy.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part VI, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist utilities serving the general public in providing electric energy.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2010, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2010.

SECTION 6. This Act shall take effect on July 1, 2005.

(Approved May 26, 2005.)

## ACT 79

H.B. NO. 1238

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Seawater Air Conditioning Projects on the Island of Oahu.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that support for the development of renewable energy systems and efficient energy systems in the State, which is geographically isolated from sources of oil, continues to be in the public interest.

The legislature further finds that Honolulu Seawater Air Conditioning LLC proposes to build seawater air conditioning district cooling systems on the island of

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Oahu. Honolulu Seawater Air Conditioning LLC is engaged in the planning, design, and construction of a seawater air conditioning district cooling facility and chilled water distribution system in downtown Honolulu using cold, deep seawater as the primary cooling source.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare. The legislature further finds that the issuance of special purpose revenue bonds and refunding special purpose revenue bonds under this Act to assist Honolulu Seawater Air Conditioning LLC, in constructing the portion of this district cooling project consisting of its chilled water distribution system and balance-of-system components and structures, will make the development of the seawater air conditioning system more economically feasible and provide numerous benefits. Seawater air conditioning systems:

- (1) Provide customers with reduced and stable cooling costs;
- (2) Use an abundant, infinite, renewable energy resource - cold, deep seawater - to provide more than seventy per cent of the cooling load;
- (3) Eliminate the need for cooling towers and, as a result, reduce potable water use, toxic chemical use, and the production of sewage;
- (4) Greatly reduce the use of harmful chemicals (refrigerants) used in conventional cooling systems;
- (5) Can provide energy savings of seventy per cent, or more, compared to conventional air conditioning systems;
- (6) Have lower operating and maintenance costs than individual building air conditioning systems;
- (7) Eliminate the need for up to 0.68 kilowatts of electricity generation capacity for each ton of cooling capacity;
- (8) Will generate millions of dollars in construction project spending. In addition to construction jobs, a significant number of long-term, well-paid jobs will also be created. Other local economic development benefits will accrue from money that stays in Hawaii, and is not used to purchase oil; and
- (9) Will help the State of Hawaii, the city and county of Honolulu, and the federal government to meet goals and mandates for energy efficiency and renewable energy use.

SECTION 2. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance is hereby authorized, with the approval of the governor, to issue special purpose revenue bonds in a total amount not to exceed \$48,000,000 in one or more series, for the purpose of assisting Honolulu Seawater Air Conditioning LLC (or a partnership in which Honolulu Seawater Air Conditioning LLC is a general partner, or the successor in interest or assignee of Honolulu Seawater Air Conditioning LLC), with one or more of the following:

- (1) The establishment of a chilled water distribution system and balance-of-system components and structures; and
- (2) The financing, refinancing, or both, of the costs related to the planning, design, and construction of the chilled water distribution system and balance-of-system components and structures for the seawater air conditioning district cooling system in downtown Honolulu, including costs of constructing, renovating, equipping, and purchasing tangible assets (including land and easements for the chilled water distribution system, and other improvements) for the chilled water distribution system.

The legislature hereby finds and determines that the activity and facilities of Honolulu Seawater Air Conditioning LLC constitute a project as defined in part V,

chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to an industrial enterprise.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist industrial enterprises.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2010, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2.

In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2010.

SECTION 6. This Act shall take effect on July 1, 2005.

(Approved May 26, 2005.)

## ACT 80

H.B. NO. 1657

A Bill for an Act Relating to Special Purpose Revenue Bonds to Assist Hoku Scientific.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 2. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$10,000,000, in one or more series, for the purpose of assisting Hoku Scientific, a Hawaii company, with planning, designing, constructing, and equipping facilities for the production of the company's core products. The legislature hereby finds and determines that the planning, designing, constructing, and equipping of facilities for the production of the company's core products constitute a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to an industrial enterprise.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part V,

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chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist industrial enterprises.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2010, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2010.

SECTION 6. This Act shall take effect on July 1, 2005.

(Approved May 26, 2005.)

## ACT 81

H.B. NO. 835

A Bill for an Act Relating to Time Sharing Plans.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 514E-11, Hawaii Revised Statutes, is amended to read as follows:

**“§514E-11 Prohibited practices.** It is a violation of this chapter for any sales agent or acquisition agent of time share units or plans to:

- (1) Fail to comply with the disclosure requirements set forth in section 514E-9 or any rule adopted pursuant thereto;
- (2) Use any promotional device, including but not limited to entertainment, prizes, gifts, food and drinks, games, transportation, luaus, ocean recreational activities, land recreational activities, aerial recreational activities, or tours, or other inducements, or make any offer thereof, without fully disclosing orally and as provided in paragraph (3) that the device is being used or offered for the purpose of soliciting sales of time share units or interests;
- (3) Offer a prospective purchaser a prize or gift as part of any time share advertising or sales promotion plan, if in order to claim the prize, the prospective purchaser must attend and complete a sales presentation, unless written disclosure is furnished to the prospective purchaser at the time the prospective purchaser is notified of the prize or gift; provided that the written disclosure is written or printed in a size equal to at least ten-point bold type and contains all of the following:
  - (A) A full description of the exact prize or gift won by the prospective purchaser including its cash value;
  - (B) All material terms and conditions attached to the prize or gift;



- (C) A statement that the consumer must attend and complete a sales presentation; and
- (D) An identification of the time share project to be offered for sale, including type of ownership, ~~exchange privileges, limitations,~~ and price ranges of the time share interests in that project;
- (4) Misrepresent or deceptively represent any material fact concerning the time share plan or time share unit;
- (5) Make any representation that a time share interest is an investment, including but not limited to the value of the interest at resale;
- (6) Fail to honor and comply with all provisions of a contract or reservation agreement with the purchaser;
- (7) Include, in any contract or reservation agreement, provisions purporting to waive any right or benefit provided for purchasers pursuant to this chapter;
- (8) Receive from any prospective purchaser any money, property (including but not limited to a credit card), or other valuable consideration prior to signing a contract or reservation agreement for the purchase of a time share plan or unit; provided that this paragraph shall not apply to sums paid by a purchaser or prospective purchaser for a tourist activity or for any other product or service offered to induce attendance at a time share sales presentation;
- (9) Make any agreement or contract with a purchaser before delivering, furnishing, or tendering to that prospective purchaser any promised promotional device or other instrument;
- (10) Distribute any promotional or disclosure material separately if the material was filed in a consolidated form;
- (11) Use any unregistered time share booth, or fail to display at all times a conspicuous, clear, and unobstructed sign of a permanent nature:
  - (A) ~~[Containing no artwork or text except:~~
    - (i) ~~The name of the time share plan or plans with which the booth is affiliated, which must be printed in capital, block-style letters at least one inch tall using bold black lettering against a white background; and~~
    - (ii) ~~At least one inch beneath the name of the time share plan or plans, the words "TIME SHARE", which must be printed in capital, block-style letters at least three and one-half inches tall using bold black lettering against a white background;]~~

That contains the words "time share" or "time sharing" in letters at least three inches tall and in a color that distinctively contrasts with the background on which the words appear;
  - (B) With minimum dimensions of nine inches by twenty-four inches, excluding any frame;
  - (C) ~~[Permanently affixed to each side of the booth facing the public,]~~ Posted on or in the booth in an upright position, perpendicular to the ground, and in a location that is easily visible to passersby; and
  - (D) Consistent with such rules as the director may adopt pursuant to this chapter and consistent also with county ordinances.

No person shall post anything upon or adjacent to the sign, or include anything in the sign, which indicates that the booth is not being used for time share solicitation purposes. As used in this paragraph, "sign of a permanent nature" specifically excludes banners, grease boards, marker boards, handwritten signs, or signs constructed of temporary

materials such as paper, poster board, or cardboard[;]. The signage requirements of this paragraph shall not apply to a booth located within a project subject to a time share plan;

- (12) Misrepresent the amount of fees to be charged, including management fees, or the structure for future fee increase; or
- (13) Sell, offer for sale, or advertise for sale, by any person, partnership, firm, corporation, joint stock company, or other association engaged in marketing time share plans within the State, any tourist activity, including but not limited to land, aerial, or water recreational activities, at less than the actual cost of the activity paid for by the licensee thereof to such vendor or give, offer to give, or advertise with the intent to give away any such tourist activity with the purpose or effect of inducing the prospective purchaser to purchase a time share plan or to attend a time share marketing event.

Any violation of this section shall also constitute an unlawful or deceptive practice within the meaning of section 480-2; provided that in addition violations of section 514E-31 or of paragraph (11) shall result in a fine of not less than \$50 for each separate offense for a maximum aggregate amount of \$500.”

SECTION 2. Section 514E-11.1, Hawaii Revised Statutes, is amended to read as follows:

**“§514E-11.1 Deceptive trade practices.** It shall constitute an unfair or deceptive practice, within the meaning of chapter 480, for any developer, acquisition agent, or sales agent of time share units or plans to:

- (1) Use any promotional device, including but not limited to entertainment, prizes, gifts, food and drinks, games, or other inducements without fully disclosing that the device is being used for the purpose of soliciting sales of time share interests;
- (2) Offer a prospective purchaser a prize or gift, in writing, as part of any time share advertising or sales promotion plan, if to claim the prize or gift, the prospective purchaser must attend a sales presentation, unless the written disclosure described in section 514E-11(3) is furnished to the prospective purchaser at the time the prospective purchaser is notified of the prize or gift; provided that the written disclosure is written or printed in a size equal to at least ten-point bold type;
- (3) Fail to inform each purchaser orally and in writing, at the time the purchaser signs the contract, of the purchaser’s seven-day right to cancel or void the contract to purchase a time share interest in a time share plan or unit;
- (4) Misrepresent in any manner the purchaser’s right to cancel or void any contract to purchase a time share interest in a time share plan or unit;
- (5) Include in any contract or document provisions purporting to waive any right or benefit to which the purchaser is entitled under this chapter;
- (6) Fail or refuse to honor any valid notice of cancellation of the contract by the purchaser and, within fifteen business days after receipt of such notice, fail or refuse to refund all payments made under the contract or sale; or fail or refuse to cancel and return any negotiable instrument executed by the [buyer] purchaser in connection with the contract or sale and take any appropriate action to terminate promptly any mortgage, lien, or other security interest created in connection with the transaction;
- (7) Fail to include above the signature line of any sales contract or, if no sales contract is used, above the signature line of any agreement with

- the purchaser, in conspicuous bold type and capital letters, the following: “Any purchaser has, under the law, a seven-day right of rescission of any time sharing sales contract”;
- (8) Misrepresent the amount of time or period of time the time share unit will be available to any purchaser;
  - (9) Misrepresent or deceptively represent the location or locations of the offered time share unit;
  - (10) Misrepresent the size, nature, extent, qualities, or characteristics of the offered time share units;
  - (11) Misrepresent the nature or extent of any services incident to the time share unit;
  - (12) Misrepresent the conditions under which a purchaser may exchange the purchaser’s occupancy rights to a time share unit in one location for occupancy rights to a time share unit in another location;
  - (13) Fail to orally disclose during the initial oral contact with a prospective purchaser that any promised entertainment, prizes, gifts, food and drinks, games, or other inducements are being offered for the purpose of soliciting sales of time share interests in time share units or plans; or
  - (14) Fail to include in promotional literature and other printed or written material a disclosure that the product or activity involves time share. The director may by rule prescribe the nature of the disclosure. This paragraph shall not apply to a sign or banner, except as provided in section 514E-11(11).”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 27, 2005.)

## ACT 82

H.B. NO. 785

A Bill for an Act Relating to Mortgage Foreclosures.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 667, Hawaii Revised Statutes, is amended by adding five new sections to be appropriately designated and to read as follows:

“**§667-A Definitions.** For the purposes of sections 667-B to 667-E, “time share interest” shall have the same meaning as in section 514E-1.

**§667-B Time share interest foreclosure under power of sale; notice; affidavit after sale.** (a) When a power of sale is contained in a mortgage of a time share interest, the mortgagee or the mortgagee’s successor in interest or any person authorized by the power to act in the premises, upon a breach of the condition, may foreclose upon the mortgage by:

- (1) Giving notice of the intention to foreclose the mortgage, and of the sale of the mortgaged time share interest by:
  - (A) Certified mail, return receipt requested, to the mortgagor at the mortgagor’s last known address, for mortgagors whose address is within the United States; or

- (B) Mail to the mortgagor at the mortgagor's last known address, for mortgagors whose address is outside the United States; and
  - (C) Publication once in each of three successive weeks (three publications), the last publication to be not less than fourteen days before the day of sale, in a newspaper of general circulation in the county in which the mortgaged time share interest lies; and
- (2) Giving such notices and do all such acts as are authorized or required by the power contained in the mortgage.

Copies of the notice shall be filed with the state director of taxation and shall be posted on the premises of the time share interest not less than twenty-one days before the day of sale.

(b) The day of sale may be at any time after four weeks from the date of publication of the first notice pursuant to subsection (a)(1). Any sale of which notice has been given pursuant to subsection (a) may be postponed from time to time by public announcement made by the mortgagee or by some person acting on the mortgagee's behalf.

(c) Within thirty days after selling the time share interest pursuant to the power of sale, the mortgagee shall file a copy of the notice of sale and the mortgagee's affidavit in the bureau of conveyances. The affidavit may lawfully be made by any person duly authorized to act for the mortgagee and in such capacity conducting the foreclosure, and shall set forth the mortgagee's acts in the time share interest fully and with particularity. The notice may contain a description of the mortgaged time share interest and the time and place proposed for its sale.

(d) The affidavit and copy of the notice shall be recorded and indexed by the registrar of conveyances as provided in chapter 501 or 502, as the case may be.

**§667-C Notice to mortgage creditors.** (a) A mortgage creditor having a mortgage lien on a time share interest who desires notice that another mortgage creditor having a mortgage lien on the time share interest intends to foreclose and sell the mortgaged time share interest pursuant to the power of sale under section 667-B, may submit a written request to the mortgagee foreclosing or who may foreclose the mortgage by power of sale, to receive notice of the mortgagee's intention to foreclose the mortgage under section 667-B. The request for notice:

- (1) May be submitted any time after the recordation or filing of the subject mortgage at the bureau of conveyances or the land court, but shall be submitted prior to completion of publication of notice of the intention to foreclose the mortgage and of the sale of the mortgaged time share interest;
- (2) Shall be signed by the mortgage creditor desiring to receive notice, or its authorized representative; and
- (3) Shall specify the name and address of the person to whom the notice is to be mailed.

(b) The mortgagee receiving the request shall thereafter give notice to all mortgage creditors who have timely submitted their request. The notice shall be sent by mail or otherwise communicated to the mortgage creditors not less than seven calendar days prior to the day of sale.

(c) No request for a copy of any notice pursuant to this section nor any statement or allegation in any such request nor any record thereof shall affect the title to the time share interest or be deemed notice to any person that any party requesting copy of the notice has or claims any right, title, or interest in, or lien or charge upon the time share interest described in the mortgage referred to therein.

**§667-D Affidavit as evidence.** If it appears by the affidavit filed under section 667-B(c) that the affiant has in all respects complied with the requirements

of the power of sale and section 667-B in relation to all things to be done by the affiant before selling the time share interest, a certified copy of the record thereof shall be admitted as evidence that the power of sale was duly executed.

**§667-E Application of time share interest power of sale requirements.** The requirements of sections 667-B to 667-D shall apply only to time share interest mortgages, loans, agreements, and contracts that contain the power of sale.”

SECTION 2. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect on January 1, 2006.

(Approved May 27, 2005.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 83**

H.B. NO. 155

A Bill for an Act Relating to Time Sharing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 454-2, Hawaii Revised Statutes, is amended to read as follows:

**“§454-2 Exemptions.** This chapter does not apply to the following:

- (1) Banks, trust companies, building and loan associations, pension trusts, credit unions, insurance companies, financial services loan companies, or federally licensed small business investment companies, authorized under any law of this State or of the United States to do business in the State;
- (2) A person making or acquiring a mortgage loan with one’s own funds for one’s own investment without intent to resell the mortgage loan;
- (3) A person licensed to practice law in the State, not actively and principally engaged in the business of negotiating loans secured by real property, when the person renders services in the course of the person’s practice as an attorney;
- (4) A person licensed as a real estate broker or salesperson in the State, not actively engaged in the business of negotiating loans secured by real property, when the person renders services in the course of the person’s practice as a real estate broker or salesperson;
- (5) An institutional investor negotiating, entering into, or performing under a loan purchase agreement for its portfolio, for subsequent resale to other institutional investors, or for placement of the mortgages into pools or packaging them into mortgage-backed securities. As used in this paragraph, “loan purchase agreement” means an agreement or arrangement under which a bank, savings and loan, credit union, financial services loan company, or other financial institution registered to do business in the State of Hawaii agrees to sell mortgage loans

or obtain funding therefor, with or without the transfer of servicing rights, to an institutional investor; ~~and~~

- (6) Foreign lender as defined in section 207-11[-]; and
- (7) A person licensed under chapter 467 as a real estate broker or salesperson selling time share interests on behalf of a time share plan developer that is licensed as a mortgage broker under this chapter; provided that:
  - (A) The acts or conduct of a developer's authorized representative shall be deemed to be the acts or conduct of the developer for the purposes of section 454-4; and
  - (B) If the person engages in acts or conduct prohibited under section 454-4(a), the acts or conduct shall constitute grounds for disciplinary action under section 467-14."

SECTION 2. Section 514E-1, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read:

"Master development" means a real estate development that consists of more than one project, including but not limited to a planned community association subject to chapter 421J with one or more sub-associations.

"Person" includes an individual, partnership, joint venture, corporation, association, business, trust, or any organized group of persons or legal entities, or any combination thereof."

2. By amending the definitions of "blanket lien", "developer", and "project" to read:

"Blanket lien" means any mortgage, deed of trust, option to purchase, master lease, vendor's lien or interest under a contract or agreement of sale, or any other lien or encumbrance [which] that affects<sup>1</sup> (i) affects more than one time share interest either directly or by reason of affecting an entire time share unit or the property upon which the time share unit to be used by the purchasers is located, and (ii) secures or evidences the obligation to pay money or to sell or convey the property and [which] that authorizes, permits, or requires the foreclosure and sale or other defeasance of the property affected; provided[~~-, however,~~] that for the purpose of this chapter, the following shall not be considered blanket liens:

- (1) The lien of current real property taxes;
- (2) Taxes and assessments levied by public authority[;] and that are not yet due and payable;
- (3) A lien for common expenses under chapter 514A or a lien on an individual time share unit for similar expenses in favor of a homeowners or community association;
- (4) An apartment lease or condominium conveyance document conveying or demising a single condominium apartment or a lease of a single cooperative apartment; and
- (5) Any lien for costs or trustee's fees charged by a trustee holding title to time share units pursuant to a trust created under section 514E-19[-]; provided that the costs or trustee's fees are not yet due and payable.

"Developer" means any person [~~-, partnership, or corporation which] that creates a time sharing plan or is in the business of selling time share units. "Developer" does not include:~~

- (1) A person who has acquired one or more time share interests for the person's own use and occupancy and later offers the time share interest for resale; provided that a rebuttable presumption shall exist that an

owner who has acquired more than twelve time share interests did not acquire them for the owner's own use and occupancy;

- (2) An association not otherwise a developer, that offers for sale, through its plan manager or a third party, time share interests transferred to the association through foreclosure, conveyance in lieu of foreclosure, cancellation for non-payment of assessments, or gratuitous transfer; and
- (3) A licensed real estate broker who owns time share interests in a time share plan and who offers one or more of the time share interests for resale if:
  - (A)<sup>2</sup> The time share interests are in a registered or previously registered time share plan and were not acquired from a developer who, during the six month period prior to conveying the time share interests to the real estate broker, was actively engaged in offering or selling the time share interests through advertising, promotional, or marketing efforts, whether within or outside the time share project itself, excluding public auctions pursuant to a foreclosure sale;
  - (B) The licensed real estate broker complies with all laws and rules applicable to resale time share interests and resale agents, excluding any registration provision requiring confirmation that the time share interests were purchased for the person's own occupancy;
  - (C) The licensed real estate broker has not used, offered, submitted, or incorporated the time share interests as part of another time share plan that would otherwise be subject to chapter 514E; and
  - (D) The licensed real estate broker owns at any one time not more than twelve time share interests in the particular time share plan.

"Project" means [property that is subject to project instruments, including but not limited to condominiums and cooperative housing corporations.];

- (1) An individual condominium project;
- (2) Two or more contiguous condominium projects that have been merged and for administrative purposes operate as a single condominium project;
- (3) An individual cooperative housing project;
- (4) An individual subdivision of single-family homes subject to one or more project instruments; or
- (5) An individual subdivision of townhomes subject to one or more project instruments.

"Project" does not include a master development."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 27, 2005.)

#### Notes

1. So in original.
2. Should be underscored.

A Bill for an Act Relating to Public Meetings.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 92-2.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Two members of a board may [~~communicate or interact privately~~] discuss between themselves [~~to gather information from each other about~~] matters relating to official board [matters] business to enable them to perform their duties faithfully, as long as no commitment to vote is made or sought[-] and the two members do not constitute a quorum of their board.”

SECTION 2. Section 92-11, Hawaii Revised Statutes, is amended to read as follows:

“**§92-11 Voidability.** Any final action taken in violation of sections 92-3 and 92-7 [~~shall~~] may be voidable upon proof of [~~wilful~~] violation. A suit to void any final action shall be commenced within ninety days of the action.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 31, 2005.)

A Bill for an Act Relating to the Uniform Information Practices Act (Modified).

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 92F-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any other [~~law~~] provision in this chapter to the contrary notwithstanding, each agency shall make available for public inspection and duplication during regular business hours:

- (1) Rules of procedure, substantive rules of general applicability, statements of general policy, and interpretations of general applicability adopted by the agency;
- (2) Final opinions, including concurring and dissenting opinions, as well as orders made in the adjudication of cases[;], except to the extent protected by section 92F-13(1);
- (3) Government purchasing information, including all bid results, except to the extent prohibited by section 92F-13;
- (4) Pardons and commutations, as well as directory information concerning an individual’s presence at any correctional facility;
- (5) Land ownership, transfer, and lien records, including real property tax information and leases of state land;
- (6) Results of environmental tests;
- (7) Minutes of all agency meetings required by law to be public;



- (8) Name, address, and occupation of any person borrowing funds from a state or county loan program, and the amount, purpose, and current status of the loan;
- (9) Certified payroll records on public works contracts except that social security numbers of individuals shall not be disclosed;
- (10) Regarding contract hires and consultants employed by agencies:
  - (A) The contract itself, the amount of compensation;
  - (B) The duration of the contract; and
  - (C) The objectives of the contract[;],  
except that social security numbers of individuals shall not be disclosed;
- (11) Building permit information within the control of the agency;
- (12) Water service consumption data maintained by the boards of water supply;
- (13) Rosters of persons holding licenses or permits granted by an agency that may include name, business address, type of license held, and status of the license;
- (14) The name, compensation (but only the salary range for employees covered by or included in chapter 76, and sections 302A-602 to 302A-640, and 302A-701, or bargaining unit (8)), job title, business address, business telephone number, job description, education and training background, previous work experience, dates of first and last employment, position number, type of appointment, service computation date, occupational group or class code, bargaining unit code, employing agency name and code, department, division, branch, office, section, unit, and island of employment, of present or former officers or employees of the agency; provided that this paragraph shall not require the creation of a roster of employees; and provided further that this paragraph shall not apply to information regarding present or former employees involved in an undercover capacity in a law enforcement agency;
- (15) Information collected and maintained for the purpose of making information available to the general public; and
- (16) Information contained in or compiled from a transcript, minutes, report, or summary of a proceeding open to the public.’’

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 31, 2005.)

## ACT 86

H.B. NO. 384

A Bill for an Act Relating to Attorneys' Fees for Court Appointed Counsel.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 802-5, Hawaii Revised Statutes, is amended to read as follows:

“§802-5 Appointment of counsel; compensation. (a) When it shall appear to a judge that a person requesting the appointment of counsel satisfies the requirements of this chapter, the judge shall appoint counsel to represent the person at all stages of the proceedings, including appeal, if any. If conflicting interests exist, or if the interests of justice require, the court may appoint private counsel, who shall receive reasonable compensation for necessary expenses, including travel, the amount of which shall be determined by the court, and reasonable fees pursuant to subsection (b). All ~~[such]~~ expenses and fees shall be ~~[certified]~~ ordered by the court. Duly ~~[certified claims for]~~ ordered payment shall be ~~[paid]~~ made upon vouchers approved by the director of finance and warrants drawn by the comptroller.

(b) The court shall determine the amount of reasonable compensation to appointed counsel, based on the rate of ~~[\$40]~~ \$90 an hour ~~[for out-of-court services, and \$60 an hour for in-court services and with a];~~ provided that the maximum allowable fee [in accordance with] shall not exceed the following schedule:

- |  |                                     |
|--|-------------------------------------|
| (1) Any felony case  | <del>[\$3,000]</del> <u>\$6,000</u> |
| (2) Misdemeanor case - jury trial  | <del>[1,500]</del> <u>3,000</u>     |
| (3) Misdemeanor case - jury waived   | <del>[750]</del> <u>1,500</u>       |
| (4) Appeals to the <del>[supreme court or]</del> intermediate appellate court  | <del>[2,500]</del> <u>5,000</u>     |
| (5) Petty misdemeanor case   | <del>[450]</del> <u>900</u>         |
| (6) Any other type of administrative or judicial proceeding, including cases arising under <del>[chapter 571]</del> <u>section 571-11(1), 571-14(a)(1), or 571-14(a)(2).</u> | <del>[1,500]</del> <u>3,000</u>     |

Payment in excess of any maximum provided for under paragraphs (1) to (6) may be made whenever the court in which the representation was rendered certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the administrative judge of ~~[such]~~ that court.

(c) The public defender and the judiciary shall submit to the department of budget and finance for inclusion in the department’s budget request for each fiscal biennium, the amount required for each fiscal year for the payment of fees and expenses pursuant to ~~[subsection (a).]~~ this section.”

SECTION 2. Act 202, Session Laws of Hawaii 2004, is amended by repealing section 78.

~~[“SECTION 78. Section 802-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:~~

~~“(b) The court shall determine the amount of reasonable compensation to appointed counsel, based on the rate of \$40 an hour for out-of-court services and \$60 an hour for in-court services and with a maximum fee in accordance with the following schedule:~~

- |   |                    |
|---|--------------------|
| (1) Any felony case   | <del>\$3,000</del> |
| (2) Misdemeanor case - jury trial   | <del>1,500</del>   |
| (3) Misdemeanor case - jury waived  | <del>750</del>     |
| (4) Appeals to the intermediate appellate court   | <del>2,500</del>   |
| (5) Petty misdemeanor case  | <del>450</del>     |
| (6) Any other type of administrative or judicial proceeding including cases arising under chapter 571 | <del>1,500</del>   |

~~Payment in excess of any maximum provided for under paragraphs (1) to (6) may be made whenever the court in which the representation was rendered certifies~~

~~that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the administrative judge of such court.”]~~

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2006.

(Approved May 31, 2005.)

**Note**

1. Prior to amendment, a period appeared here.

**ACT 87**

S.B. NO. 1643

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

**PART I  
PURPOSE**

SECTION 1. The legislature finds that the State has made a commitment to public education and public schools through its Constitution and numerous laws. Until recently, all public education was established, financially supported, and controlled by the board of education and the department of education. However, the creation of new century charter schools outside of the department of education, chartered directly by the board of education, has in effect created two groups of schools. Although they share a wide variety of common objectives, there has been an ongoing debate among the stakeholders as to which operational similarities should, in the interests of parity, be clarified in statute as legally comparable as well.

There are nevertheless some important differences between the two groups, particularly with regard to their target populations, approaches to education, legal mandates, and funding structures. The flexibility that generates many of these differences is at the heart of the vitality of charter schools as an educational reform model in Hawaii and should be retained.

While many of Hawaii’s education laws were enacted at a time when all public schools were department of education schools, the creation of new century charter schools requires clarifications within the statutes. These necessary modifications center primarily on the issues of:

- (1) Accountability, personnel, and weighted student formula;
- (2) Funding;
- (3) Workers’ compensation; and
- (4) The federal Individuals with Disabilities Education Act.

**PART II  
ACCOUNTABILITY, PERSONNEL, AND WEIGHTED STUDENT  
FORMULA**

SECTION 2. The purpose of this part is to facilitate the ongoing improvement of new century charter school laws by:

- (1) Clarifying certain aspects of Hawaii’s charter school laws and updating the definitions of “public schools” and “new century charter schools”;

- (2) Creating a more rigorous standard for the chartering of additional new century charter schools;
- (3) Allowing local school boards to participate in the department of education listings;
- (4) Ensuring that qualified personnel may move more freely between department schools and charter schools;
- (5) Enabling charter schools to propose their own weighted student formula;
- (6) Requiring collective bargaining increases allocated by the department of budget and finance to the charter schools administrative office;
- (7) Exempting the charter schools administrative office from the state procurement code;
- (8) Allowing the executive director to be hired through a multi-year contract;
- (9) Prohibiting any chief executive officer, chief administrative officer, executive director, or otherwise from serving as chair of the local school board; and
- (10) Creating a task force to identify and recommend to the legislature revisions to the existing charter school law and to help create an effective framework for overseeing and supporting new and existing charter schools.

To alleviate the confusion regarding the designation of new century charter schools as public schools, it is the legislature's intent to clarify that new century charter schools are public schools under the board of education. Although there may be references to public schools within other chapters of the Hawaii Revised Statutes, these statutes may not necessarily call for the inclusion of new century charter schools. However, amending these two definitions clarifies that new century charter schools are in fact public schools.

SECTION 3. Section 302A-101, Hawaii Revised Statutes, is amended by amending the definitions of "new century charter schools" and "public schools" to read as follows:

““New century charter schools” means ~~[the implementation of]~~ public schools chartered by the board of education with the flexibility to implement alternative frameworks with regard to curriculum, facilities management, instructional approach, length of the school day, week, or year, and personnel management, ~~formed under section 302A-1182].~~

“Public schools” means all academic and noncollege type schools ~~[either]~~ established and maintained by the department~~[, or issued a charter]~~ and new century charter schools chartered by the board of education, in accordance with law. ~~[All other academic and noncollege type schools are “private schools”, irrespective of the hours during which the sessions take place.]”~~

SECTION 4. Section 302A-1182, Hawaii Revised Statutes, is amended to read as follows:

“**§302A-1182 New century charter schools; establishment.** (a) Up to a total of twenty-three schools may be established as new century charter schools. These new century charter schools may be established by:

- (1) The creation of a new school~~;~~ pursuant to subsections (b) and (c); or
- (2) The creation of a new school, comprising programs or sections of existing public school populations and using existing public school facilities, pursuant to ~~[subsection]~~ subsections (b)~~;~~ and (c).

(b) Any community, group of teachers, group of teachers and administrators, entity recognized as a nonprofit organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any program within an existing school may submit a letter of intent to the board to form a new century charter school, establish a local school board as its governing body, and develop a detailed implementation plan pursuant to subsection (c).

(c) The local school board, with the support and guidance of the executive director, shall formulate and develop a detailed implementation plan that meets the requirements of this subsection and section 302A-1184. The plan shall include the following:

- (1) A description of employee rights and management issues and a framework for addressing those issues that protect the rights of employees;
  - (2) A plan for identifying, recruiting, and retaining highly-qualified instructional faculty;
  - ~~[(2)]~~ (3) A plan for identifying, recruiting, and selecting students that is not exclusive, elitist, or segregationist;
  - ~~[(3)]~~ (4) The curriculum and instructional framework to be used to achieve student outcomes, including an assessment plan;
  - ~~[(4)]~~ (5) A comprehensive plan for the assessment of student, administrative support, and teaching personnel performance[;] that:
    - (A) Recognizes the interests of the general public;
    - (B) Incorporates or exceeds state educational content and performance standards;
    - (C) Includes a system of faculty and staff accountability that holds faculty and staff both individually and collectively accountable for their performance, and that is at least equivalent to the average system of accountability in public schools throughout the State; and
    - (D) Provides for program audits and annual financial audits[-];
  - ~~[(5)]~~ (6) The governance structure of the school[;] that incorporates a conflict of interest policy and a plan for periodic board training;
  - (7) A financial plan based on the most recent fiscal year's per-pupil charter school allocation that demonstrates the ability to meet the financial obligations of one-time start-up costs and ongoing costs such as monthly payrolls, faculty recruitment, professional development, and facilities costs; and
  - ~~[(6)]~~ (8) A plan for any necessary design, construction, renovation, and management of facilities that is consistent with the state facilities plan; provided that:
    - (A) If the facilities management plan includes use of existing school facilities, the new century charter school shall receive authorization from the administrator responsible for the facilities; and
    - (B) The final determination of use shall fall within the board's discretion.
- (d) The detailed implementation plan shall be submitted to the new century charter school review panel, which shall be composed of seven members as follows:
- (1) ~~Four~~ Two of the members shall be board of education members or their designees appointed by the chairperson of the board of education;
  - (2) Two of the members shall be members of the new century charter school community approved by the chairperson of the board of education from a list submitted by existing new century charter schools; ~~and~~
  - (3) One member shall be the executive director or the executive director's designee[-];

- (4) One member shall be appointed by the dean of the University of Hawaii's college of education; and
- (5) One member shall be a representative of the business community appointed by chairperson of the board of education.

Panel review procedures shall be as provided in this section. The board may adopt rules pursuant to chapter 91 to further guide the panel's review process.

(e) The new century charter school review panel shall have sixty working days to review the completed implementation plan for a proposed new century charter school to ensure that it meets the requirements of subsection (c) and section 302A-1184. Within forty-five working days, the panel shall issue a report of its preliminary findings to the board of education and the local school board. If the panel subsequently determines that the implementation plan:

- (1) Meets the requirements of subsection (c) and section 302A-1184, the panel shall by the sixtieth working day submit a recommendation to the board of education to issue a charter to the proposed new century charter school. Upon receipt of the panel's recommendation, the board ~~shall~~ may issue a charter, and the implementation plan shall be converted to a written performance contract between the school and the board; ~~or~~ provided that if the board does not issue a charter, the board shall:

- (A) Clearly identify its reasons for not issuing the charter; and
- (B) Allow the local school board to revise its plan, in accordance with the board's reasons for rejecting the plan, and resubmit the amended plan; or

- (2) Fails to meet the requirements of subsection (c) or section 302A-1184, the panel:

- (A) Shall notify the local school board of the finding in writing to enable the local school board to appropriately amend the plan to address the findings; and
- (B) May submit a recommendation to the board to issue a provisional approval for a charter if the panel determines that the applicant may reasonably be expected to expeditiously resolve any remaining findings impeding the issuance of a charter. The provisional approval shall be effective for one year. The board may extend the provisional approval beyond a period of one year. If a charter is subsequently issued, the amended implementation plan shall be converted to a written performance contract between the school and the board.

(f) An amended implementation plan shall be submitted within thirty working days of notification pursuant to subsection (e)(2)(A). The board shall deny the issuance of a charter if the local school board does not submit an amended implementation plan within the thirty working day period. The panel shall have thirty working days to review the amended implementation plan. If the amended implementation plan:

- (1) Meets the requirements of subsection (c) and section 302A-1184, the panel shall, by the thirtieth working day, submit a recommendation to the board of education to issue a charter to the proposed new century charter school. If a charter is issued, the amended implementation plan shall be converted to a written performance contract between the school and the board; or
- (2) Fails to address the findings to the panel's satisfaction, the panel shall deny issuance of a charter.

(g) A local school board may file an appeal of the denial of an application for a charter with the panel. Upon filing an appeal, the panel shall forward the

implementation plan and appropriate documentation of the appeal to the board of education. Within thirty working days, the board of education shall issue a report of its findings and final determination to the local school board. If the implementation plan is approved, the board of education shall issue a charter and the implementation plan shall be converted to a written performance contract between the school and the board of education.

(h) The State shall afford the local school board of any new century charter school the same protections as the State affords to the board of education.

(i) The State shall afford administrative, support, and instructional employees in new century charter schools full participation in the State's systems for retirement, workers' compensation, unemployment insurance, temporary disability insurance, and health benefits in accordance with the qualification requirements for each.

(j) The department, to the extent possible, shall provide its position listings to the charter school administrative office and any interested local school board of any new century charter school.

(k) The department, in conjunction with the charter school administrative office, shall facilitate and encourage the movement of instructional personnel between the department and new century charter schools, including limiting probationary status to one year; provided that:

- (1) Comparable and verifiable professional development and employee evaluation standards and practices, as determined and certified by the charter school administrative office, are in place in new century charter schools for instructional staff;
- (2) New century charter school licensed teachers or highly qualified individuals, as determined by the department, who are not yet tenured in the department and are entering or returning to the department, after full-time employment of no less than one full school year at the charter school, shall be subject to no more than one year of probationary status; and
- (3) Tenured department licensed teachers or highly qualified individuals, as determined by the department, who transfer to new century charter schools shall not be required to serve a probationary period.

[(+)] (l) Any new century [conversion] charter school may, prior to the beginning of the school year, enter into an annual contract with [the] any department [of education] for centralized services to be provided by the department.'

SECTION 5. Section 302A-1182.5, Hawaii Revised Statutes, is amended to read as follows:

**‘‘[§]302A-1182.5[§] New century charter schools and new century conversion charter schools; weighted student formula. (a) Notwithstanding section 302A-1185 and beginning on September 1, 2006, new century charter schools and new century conversion charter schools shall elect whether to receive allocations according to the department's weighted student formula adopted pursuant to section 302A-1303.6 by the board of education; provided that:**

- (1) All new century charter schools and new century conversion charter schools, as a group, with each local school board being accorded one vote, shall elect, by greater than two-thirds agreement among the local school boards, whether to receive allocations through the department's weighted student formula;**
- (2) Any election by new century charter schools and new century conversion charter schools to receive department allocations, or not to receive allocations, through the department's weighted student formula shall be**

made by September 1 of each even-numbered year, and [such] the election shall apply to the fiscal biennium beginning July 1 of the following year; and

- (3) The election to receive allocations, or not to receive allocations, through the department's weighted student formula shall be communicated to the department through the charter school administrative office.

(b) The new century charter schools, working through the charter school administrative office, may propose to the board of education an alternative weighted student formula, approved of by more than two-thirds of the local school boards, with each local school board being accorded one vote, to be administered by the charter school administrative office and to apply to the per-pupil allocation for charter schools."

SECTION 6. Section 302A-1184, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Schools designated as new century charter schools shall be exempt from chapter 92 and all applicable state laws, except those regarding:

- (1) Collective bargaining under chapter 89; provided that:
  - (A) The exclusive representatives defined in chapter 89 may enter into agreements that contain cost and noncost items to facilitate decentralized decisionmaking;
  - (B) The exclusive representatives and the local school board of the new century charter school may enter into agreements that contain cost and noncost items;
  - (C) The agreements shall be funded from the current allocation or other sources of revenue received by the new century charter school; [and] provided that employees included in collective bargaining increases shall be allocated by the department of budget and finance to the charter school administrative office for distribution to charter schools; and
  - (D) These agreements may differ from the master contracts;
- (2) Discriminatory practices under section 378-2; and
- (3) Health and safety requirements.

New century charter schools and the charter school administrative office shall be exempt from the state procurement code, chapter 103D, but shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices. However, where possible, the new century charter school is encouraged to use the provisions of chapter 103D; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption of chapter 103D and shall not subject the new century charter school to any other provision of chapter 103D. New century charter schools shall account for funds expended for the procurement of goods and services, and this accounting shall be available to the public. In addition, notwithstanding any law to the contrary, as public schools and entities of the State, new century [publie] charter schools shall not bring suit against any other entity or agency of the State [of Hawaii]."

SECTION 7. Section 302A-1186, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"[(b) The board shall initiate an annual independent evaluation of each new century charter school for the first two years after its establishment and every four years thereafter to assure organizational viability and compliance with applicable



state laws, statewide student content and performance standards, and fiscal accountability; provided that each new century charter school established prior to July 1, 1998, shall be evaluated four years after July 1, 1998, and every four years thereafter. Upon a determination by the board that student achievement within a new century charter school does not meet the student performance standards, or that the new century charter school is not fiscally responsible, a new century charter school shall be placed on probationary status and shall have one year to bring student performance into compliance with statewide standards and improve the school's fiscal accountability. If a new century charter school fails to meet its probationary requirements, or fails to comply with any of the requirements of this section, the board, upon a two-thirds majority vote, may then revoke the charter of the new century charter school.]

(b) The board shall adopt guidelines for multi-year evaluations of charter schools that have been chartered for four or more years, or for special evaluations at any time, including a schedule of such evaluations. Based upon the findings of an evaluation, the board may place a new century charter school on probationary status. The board shall adopt guidelines for placing new century charter schools on probation, provided that:

- (1) The new century charter school and the charter school administrative office are involved in substantive discussions with the board regarding the evaluation;
- (2) The notice of probation is delivered to the new century charter school and specifies the deficiencies requiring corrections, the probation period, and monitoring and reporting requirements; and
- (3) For deficiencies related to student performance, a new century charter school shall be allowed two years to improve student performance; and
- (4) For deficiencies related to financial plans, a new century charter school shall be allowed one year to develop a sound financial plan.

The new century charter school shall remain on probationary status until the board votes to either remove the new century charter school from probationary status or revoke the charter. If a new century charter school fails to resolve deficiencies by the end of the probation period, the board may, by two-thirds vote, revoke the charter. The board may revoke the charter for serious student or employee health or safety deficiencies in accordance with guidelines adopted by the board, provided that:

- (1) The new century charter school is given notice of specific health or safety deficiencies and is afforded an opportunity to present its case to the board;
- (2) The chairperson of the board appoints a task group to visit the new century charter school and conduct meetings with its local school board and its school community to gather input;
- (3) Two-thirds of the board vote to revoke the charter;
- (4) The best interest of the school's students guide all decisions; and
- (5) After a decision to revoke a charter, the new century charter school shall be allowed to remain open until a plan for an orderly shut-down or transfer of students and assets is developed and executed.

If there is an immediate concern for student or employee health or safety at a new century charter school, the board, in consultation with the charter school administrative office, may adopt an interim restructuring plan that may include appointment of an interim local school board, and interim local school board chairperson, or a principal to temporarily assume operations of the school.

For the purposes of this subsection, "organizational viability" means that a new century charter school:

- (1) Has been duly constituted in accordance with its charter;

- (2) Has a local school board established in accordance with law and its charter;
- (3) Employs sufficient faculty and staff to provide the necessary educational program and support services and to operate the facility in accordance with its charter; ~~and~~
- (4) Maintains accurate and comprehensive records regarding students[,] and employees[, and complies with federal and state health and safety requirements.] as determined by the charter school administrative office;
- (5) Meets appropriate standards of student achievement;
- (6) Cooperates with board requirements in conducting its function as charter authorizer;
- (7) Complies with applicable federal, state, and county laws and requirements;
- (8) In accordance with the charter school administrative office guidelines and procedures, is financially sound and fiscally responsible in its use of public funds, maintains accurate and comprehensive financial records, operates in accordance with generally accepted accounting practices, and maintains a sound financial plan;
- (9) Operates within the scope of its charter and fulfills obligations and commitments of its charter;
- (10) Complies with all health and safety laws and requirements; and
- (11) Complies with all charter school administrative office directives, policies, and procedures.”

SECTION 8. Section 302A-1187, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established a charter school administrative office, which shall be attached to the department ~~[of education]~~ for administrative purposes only. The office shall be administered by an executive director, who shall be appointed without regard to chapters 76 and 89 by the board of education based upon the recommendations of an organization of charter schools operating within the State or from a list of nominees submitted by the charter schools. The board of education may hire the executive director on a multi-year contract. The executive director may hire necessary staff without regard to chapters 76 and 89 to assist in the administration of the office.”

SECTION 9. Section 302A-1191, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

“(a) As used in this section:

“New century conversion charter school” means:

- (1) Any existing department school that converts to a charter school and is managed and operated in accordance with subsection (d); or
- (2) Any existing department school that converts to a charter school and is managed and operated by a nonprofit organization in accordance with this section, excluding subsection (d).

“Nonprofit organization” means a private, nonprofit, tax-exempt entity that:

- (1) Is recognized as a ~~[tax-exempt]~~ tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended;
- (2) Is domiciled in this State; and
- (3) Makes a minimum annual contribution of \$1 per pupil toward the operation of a new century conversion charter school for every \$4 per

pupil allocated by the charter school administrative office for the operation of the charter school.

(b) A nonprofit organization may submit a letter of intent to the board of education to convert a department of education school to a charter school, operate and manage [an existing public school as a new century conversion charter school,] the school, establish a local school board as its governing body, and develop a detailed implementation plan pursuant to section 302A-1182(c); provided that:

- (1) The local school board as the governing body of the new century conversion charter school shall be composed of the board of directors of the nonprofit organization and not the participants specified in subsection (d)(1). The nonprofit organization may also appoint advisory panels of community representatives for each school managed by the organization, with whom the organization may consult; provided that these panels shall not have governing authority over the school and shall serve only in an advisory capacity to the nonprofit organization;
- (2) The detailed implementation plan for each new century conversion charter school to be operated by the nonprofit organization shall be formulated, developed, and submitted by the local school board. The detailed implementation plan shall be approved by a majority of the votes cast by existing administrative, support, and teaching personnel, and parents; provided that the school personnel may request their bargaining unit representative to certify and conduct the elections for their respective bargaining units;
- (3) After the detailed implementation plan for a new century conversion charter school operated and managed by the nonprofit organization has been approved by the new century charter school review panel and the board of education as provided in section 302A-1182(d) to (g), the board of education shall issue a charter, and the implementation plan shall be converted to a written performance contract between the nonprofit organization and the board of education, under which the new century conversion charter school shall be managed and operated as a division of the nonprofit organization[;] and shall have the same relationship with the charter school administrative office as any other local school board for a charter school;
- (4) The board of directors of the nonprofit organization, as the governing body for the new century conversion charter school that it operates and manages, shall have the same protections that are afforded to the state board of education;
- (5) Any new century conversion charter school that is managed and operated by a nonprofit organization shall be eligible for the same federal and state funding as other public schools; provided that the nonprofit organization may allocate federal and state funds among two or more of the new century conversion charter schools that it operates and manages to the extent permitted by law; ~~and~~
- (6) If, at any time, the board of directors of the nonprofit organization governing the new century conversion charter school votes to discontinue its relationship with the charter school, the charter school may submit an application to the board to continue as a conversion school without the participation of the nonprofit organization; and
- ~~(6)~~ (7) If, at any time, the new century conversion charter school dissolves or the charter is revoked, the State ~~[of Hawaii]~~ shall have first right, at no cost to the State, to all the assets and facilities of the new century conversion charter school, except as provided in the detailed implementation plan.”

2. By amending subsections (d) and (e) to read:

“(d) As an alternative to subsection (b), any public school or schools may submit a letter of intent to the board of education to form a new century conversion charter school, establish a local school board as its governing body, and develop a detailed implementation plan pursuant to section 302A-1182(c); provided that:

- (1) The local school board as its governing body shall be composed of, at a minimum, one representative from each of the following participant groups:
  - (A) Principals;
  - (B) Instructional staff members selected by the school instructional staff;
  - (C) Support staff selected by the support staff of the school;
  - (D) Parents of students attending the school selected by the parents of the school;
  - (E) Student body representatives selected by the students of the school; and
  - (F) The community at-large; ~~and~~
- (2) No chief executive officer, chief administrative officer, executive director, or otherwise designated head of a school may serve as the chair of the local school board; and
- ~~{2}~~ (3) The detailed implementation plan shall be approved by a majority of the votes cast by existing administrative, support, and teaching personnel, and parents; provided that the school personnel may request their bargaining unit representative to certify and conduct the elections for their respective bargaining units.

(e) ~~[Up to a total of twenty-five schools may be established as new century conversion charter schools.]~~ Any new century conversion charter school may, prior to the beginning of the school year, enter into an annual contract with the department of education for centralized services to be provided by the department.”

SECTION 10. (a) There is established the task force on charter school governance to identify and recommend to the legislature revisions to the existing charter school law and to help create an effective framework for overseeing and supporting new and existing charter schools. The recommendations of the task force, at a minimum, shall address:

- (1) The powers, authority, and requirements of schools, local school boards, the charter school administrative office, and board of education, including:
  - (A) The responsibility and authority to impose sanctions when a charter school fails to comply with contractual or statutory requirements;
  - (B) The authority for and management of technical support and interventions, including mergers and closure of charter schools and transfer of students to other public schools; and
  - (C) The ability to impose accountability measures for all charter schools, such as appropriate accreditations and adherence to generally accepted government accounting standards;
- (2) An application and start-up process for charter schools requiring sufficient time and proper scrutiny to ensure a school’s readiness prior to accepting students;
- (3) The limitation of charter school exemptions from laws to only those laws applying to public schools;

- (4) The State's rights and liabilities when charter schools or their governing corporate bodies acquire real property or conduct for-profit business activities, including clarification of charter schools' authority to incur debt and the State's responsibility in case of default;
- (5) The conflict of interest inherent in the position of the director of the charter school administrative office;
- (6) The eligibility, administration, and funding of state benefits for non-certificated employees of charter schools;
- (7) The feasibility of assisting charter schools with facilities needs, including priority access to any vacant government buildings suitable for conversion to a charter school;
- (8) Whether there should be a different per-pupil allocation for those new century charter schools and new century conversion charter schools whose physical plant is located on state property and therefore reap the benefits of being accommodated on the State of Hawaii's preexisting, regularly scheduled repair and maintenance and capital improvement program initiatives;
- (9) The feasibility of creating a formal charter school board to bring needed expertise and focus on charter school support and accountability issues, and to operate in a manner similar to the Hawaii teacher standards board;
- (10) The feasibility of exempting local school boards from the requirements of chapter 91 and 92, provided that the local school boards shall make available the notices and agendas of public meetings:
  - (A) At a publicly accessible area in the local school board or new century charter school's administrative office so as to be available for review during regular business hours; and
  - (B) On the local school board's or new century charter school's Internet web site not less than six days prior to the public meeting, unless a waiver is granted by the charter school administrative office executive director in the case of an emergency; and
- (11) The appropriate applicability of state and county land use and zoning laws.
  - (b) The task force shall consist of sixteen members as follows:
    - (1) The executive director of the charter school administrative office or the executive director's designee, who shall serve as the chairperson and facilitator of the task force;
    - (2) The state auditor or the auditor's designee;
    - (3) The superintendent of education or the superintendent's designee;
    - (4) The chairperson of the board of education or the chairperson's designee;
    - (5) The chairperson of the charter schools committee of the board of education or the chairperson's designee;
    - (6) The director of human resources development or the director's designee;
    - (7) The state director of finance or the director's designee;
    - (8) The dean of the University of Hawaii college of education or the dean's designee;
    - (9) The director of the Hawaii Educational Policy Center or the director's designee;
    - (10) A representative from the Hawaii State Teachers Association;
    - (11) A representative from the Hawaii Government Employees Association;
    - (12) A representative from the Hawaii Charter Schools Network;

- (13) A representative from Na Lei Na 'auao Native Hawaiian Charter School Alliance;
- (14) A representative from the Ho'okako'o Corporation;
- (15) A representative from Ho'olako Like; and
- (16) A representative from the business community to be appointed by the governor, without regard to section 26-34, Hawaii Revised Statutes.

The charter school administrative office shall staff the task force.

(c) The task force on charter school governance may form advisory subcommittees to obtain input from key stakeholders as determined necessary by the task force.

(d) Members of the task force on charter school governance shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(e) The charter school administrative office shall submit a report to the legislature on the task force's progress, findings, and recommendations no later than twenty days prior to the convening of the regular session of 2006.

SECTION 11. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2005-2006 to support the operations of the task force on charter school governance.

The sum appropriated shall be expended by the department of education for the purposes of this part.

### PART III FUNDING

SECTION 12. The purpose of this part is to bring new century charter schools closer to a more equitable and stable funding level for basic operations by:

- (1) Establishing and appropriating funds for a per-pupil allocation funding mechanism to be based on the most recently enacted department of education budget;
- (2) Requiring that the charter school administrative office's request for general fund appropriations for each school also be based on fringe benefit costs that must be included in the department of budget and finance's annual budget request, and appropriating funds for these fringe benefits;
- (3) Requiring the legislature to make additional appropriations for collective bargaining increases for charter school employee members of collective bargaining units;
- (4) Allowing the legislature to make additional appropriations for workers' compensation benefits; and
- (5) Providing charter schools with access to all federal education funds that are received by the State and authorizing the charter school administrative office to manage the federal funds.

SECTION 13. Section 302A-1185, Hawaii Revised Statutes, is amended as follows:

- 1. By amending subsections (a) and (b) to read:

“(a) Beginning with the fiscal year [~~2004-2005 supplemental~~] 2005-2006 budget request, and each budget request thereafter, the charter school administrative office shall submit a request for general fund appropriations for each new century charter school based upon:

- (1) The actual and projected enrollment figures in the current school year for each charter school; [~~and~~]

- (2) A ~~[per pupil]~~ per-pupil amount for each regular education and special education student, which shall be equivalent to the total ~~[per pupil]~~ per-pupil cost based upon average enrollment in all cost categories, including comprehensive school support services but excluding special education services, and for all means of financing except federal funds, as reported in the most recently published department of education consolidated annual financial report, provided that the legislature may make an adjustment to the ~~[per pupil]~~ per-pupil allocation for the purposes of this section~~[-];~~ and
- (3) Those fringe benefit costs requested shall be included in the department of budget and finance's annual budget request. No fringe benefit costs shall be charged directly to or deducted from the charter school per-pupil allocations.

The legislature shall make an appropriation based upon the budget request; provided that the legislature may make additional appropriations for ~~[collective bargaining increases for charter school employee members of collective bargaining units,]~~ fringe ~~[and]~~, workers' compensation, and other employee benefits, facility costs, and ~~[for]~~ other requested amounts. The governor, pursuant to chapter 37, may impose restrictions or reductions on charter school appropriations similar to those imposed on other public schools.

(b) All federal financial support for new century charter schools shall be no less than all other public schools; provided that if administrative services related to federal grants and subsidies are provided to the charter school by the department, the charter school shall reimburse the department for the actual costs of the administrative services in an amount that does not exceed six and one-half per cent of the charter school's federal grants and subsidies. The department shall provide the charter school administrative office with all federal grant proposals that include charter schools as potential recipients and timely reports on federal grants received for which charter schools may apply. Federal funds received by the department for charter schools shall be transferred to the charter school administrative office for distribution to charter schools in accordance with the federal requirements.

Any new century charter school shall be eligible to receive any supplementary financial grant or award for which any other public school may submit a proposal, or any supplemental federal grants limited to new century charter schools; provided that if department administrative services, including funds management, budgetary, fiscal accounting, or other related services, are provided with respect to these supplementary grants, the charter school shall reimburse the department for the actual costs of the administrative services in an amount that does not exceed six and one-half per cent of the supplementary grant for which the services are used.

All additional funds that are generated by the local school boards, not from a supplementary grant, shall be separate and apart from allotted funds and may be expended at the discretion of the local school boards."

2. By amending subsection (f) to read:

"(f) The department shall transfer, no later than November 15, additional funds [from EDN 100] of not less than eighty per cent of the additional per-pupil allocation to EDN 600 for new century charter schools [whose] in which student enrollment, verified on or immediately prior to October 15 as provided for by subsection (c), exceeds the new century charter schools' preliminary projected student enrollment, in an amount corresponding to the number of additional students and the [per pupil] per-pupil allocation. The charter school administrative office shall transfer [from EDN 600 to EDN 100 any excess per pupil allocations for new century charter schools whose verified student enrollment is lower than their projected student enrollment in an amount corresponding to the lower number of

students and the per pupil allocation.], no later than November 15, excess funds of not more than eighty per cent of the excess per-pupil allocation to EDN 100 for new century charter schools in which student enrollment, verified on or immediately prior to October 15 as provided for by subsection (c), fails to equal or exceed the new century charter schools' preliminary projected student enrollment, in an amount corresponding to the number of additional students and the per-pupil allocation."

SECTION 14. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,200,000, or so much thereof as may be necessary for fiscal year 2005-2006 and the sum of \$1,500,000, or so much thereof as may be necessary for fiscal year 2006-2007 for EDN 600.

The sums appropriated shall be expended by the department of education for the purposes of this part.

#### PART IV WORKERS' COMPENSATION

SECTION 15. The workers' compensation law is established in chapter 386 of the Hawaii Revised Statutes and applies to all employees suffering injuries arising out of, and in the course of their, employment. It is not a "benefit" per se but an entitlement arising from the employment relationship. The legislature finds that the State operates a self-insured workers' compensation system where claims are investigated and processed by state workers. These claims are then paid from legislative appropriations. Meanwhile, public schools are not required to reduce their operational funds to pay for workers' compensation claims for state workers at their schools. Charter school employees deserve the right to participate in this same system as public employees without having the funding for this coverage come from charter school operational funds.

The legislature further finds that the department of human resources development administers a majority of the state agencies' workers' compensation claims, and it would be appropriate for the department to extend this service to charter schools. In fairness to the department of human resources development, it should be compensated for this additional workload in an amount that is not more than the amount paid by the charter school administrative office to the department of education for performing comparable worker's compensation services under the terms of a memorandum of understanding.

The purpose of this part is to allow charter school employees to participate in the State's workers' compensation system; provided that the department of human resources development shall administer and pay the claims and the individual new century charter schools shall be responsible for compiling the preliminary claim form.

SECTION 16. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§302A- New century charter schools; administration of workers' compensation.** The department of human resources development shall administer workers' compensation claims for employees of new century charter schools, who shall be covered by the same self-insured workers' compensation system offered to other public employees and administrative state units, including the processing, investigation, and payment of claims; provided that:

- (1) New century charter schools shall compile the preliminary claim form and forward it to the department of human resources development; and



- (2) The department of human resources development shall receive no more than 0.07 per cent of the EDN 600 appropriation to process these workers' compensation claims.''

PART V  
FEDERAL INDIVIDUALS WITH DISABILITIES EDUCATION ACT

SECTION 17. The legislature finds an inconsistency between the Hawaii Revised Statutes and the Individuals with Disabilities Education Act. To ensure federal funding for students enrolled in public charter schools who are eligible for special education, section 302A-1188, Hawaii Revised Statutes, must be amended to comply with Part B regulations of the Individuals with Disabilities Education Act.

The purpose of this part is to comply with federal regulations under the Individuals with Disabilities Education Act.

SECTION 18. Section 302A-1188, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The department shall be responsible for the provision of a free, appropriate public education. Any new century charter school that enrolls special education students or identifies one of its students as eligible for special education shall be responsible for providing the educational and related services required by a student’s individualized education [plan; provided that if the] program. The programs and services for the student shall be determined collaboratively by the student’s individualized education program team and the student’s parents or legal guardians. If the new century charter school is unable to provide all of the required services [due to limited resources within its control, then services to the student shall be determined and provided by the department of education.], then services to the student shall be provided by the department according to services determined by the student’s individualized educational program team. The department [~~of education~~] shall collaborate with the charter school administrative office to develop guidelines related to the provision of special education services and resources to each new century charter school. [~~In making the determination about the provision of services to a special education student enrolled in a charter school, the] The department shall review all of the current individualized education [plans] programs of special education students enrolled in a new century charter school[;] and may offer staff or funding, or both, to the new century charter school based upon a [per pupil] per-pupil weighted formula implemented by the department and used to allocate resources for special education students in the public schools. [~~The department may also offer services to the special education student at a public school within the same school complex that the charter school is located.]”~~”~~

PART VI  
MISCELLANEOUS

SECTION 19. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 20. This Act shall take effect upon approval; provided that sections 3, 11, and 14 of this Act shall take effect on July 1, 2005.

(Approved June 1, 2005.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Securities.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 485-6, Hawaii Revised Statutes, is amended to read as follows:

“**§485-6 Exempt transactions.** The following transactions shall be exempt from sections 485-4.5, 485-8, and 485-25(a)(7):

- (1) Any isolated nonissuer transaction, whether effected through a dealer or not;
- (2) Any nonissuer transaction in an outstanding security if the manual of Hawaiian securities or any other recognized securities manual contains the names of the issuer’s officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years (or during the existence of the issuer and any predecessors if less than three years) in the payment of principal, interest, or dividends on the security;
- (3) Any nonissuer transaction effected by or through a registered dealer pursuant to an unsolicited order or offer to buy;
- (4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;
- (5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;
- (6) Any transaction by a personal representative, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;
- (7) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter;
- (8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a dealer, whether the purchaser is acting for itself or in some fiduciary capacity;
- (9) Any transaction pursuant to an offer to sell securities of an issuer, if the transaction is part of an issue which:
  - (A) There are no more than twenty-five offerees, wherever located (other than those designated in paragraph (8)) during any twelve consecutive months;
  - (B) The issuer reasonably believes that all purchasers, wherever located, (other than those designated in paragraph (8)), are purchasing for investment;
  - (C) No commission, discount, or other remuneration is paid or given, directly or indirectly, to a person, other than a dealer or agent registered under this chapter, for soliciting a prospective purchaser in this State; and

- (D) The securities of the issuer are not offered or sold by general solicitation or any general advertisement or other advertising medium;
- (10) Any offer or sale of a preorganization certificate or subscription for any security to be issued by any person if no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, and the number of subscribers does not exceed twenty-five;
- (11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within ninety days of their issuance, if no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in the State;
- (12) Any offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933, if no stop order or refusal order is in effect and no public proceeding or examination looking toward the order is pending under either this chapter or the Act;
- (13) Any offer or sale, by or through a real estate broker or real estate salesperson licensed under the laws of the State, of a security issued on or after July 1, 1961, by a corporation organized under the laws of the State, the holder of which is entitled solely by reason of the holder's ownership thereof, to occupy for dwelling purposes, or to a lease ~~[which]~~ that entitles the holder to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by the corporation, subject, however, to section 485-7;
- (14) ~~[Any offer or sale by or through a real estate broker or real estate salesperson licensed under the laws of the State of an apartment in a condominium project, and a rental management contract relating to the apartment, including an interest in a general or limited partnership formed for the purpose of managing the rental of apartments if the rental management contract or the interest in the general or limited partnership is offered at the same time as the apartment is offered. The words "apartment", "condominium", and "project" are defined as they are defined in section 514A-3;] Any offer or sale, by or through a real estate broker or real estate salesperson licensed under the laws of the State, of a rental management contract relating to an apartment rental program in a condominium project, with or without the offer or sale of an apartment in the condominium project, including an interest in a legal entity formed for the purpose of managing or operating the rental of apartments or the apartment rental program in the condominium project. The words "apartment", "condominium", and "project" shall have the same meanings as in section 514A-3;~~
- (15) Any transactions not involving a public offering within the meaning of section 4(2) of the Securities Act of 1933;
- (16) (A) Any transactions involving the offer or sale of a security by an issuer to an accredited investor that meet the following requirements:
- (i) The issuer reasonably believes that the sale is to persons who are accredited investors;
  - (ii) The issuer is not in the development stage, without specific business plan or purpose;
  - (iii) The issuer has not indicated that the issuer's business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person; and

- (iv) The issuer reasonably believes that all purchasers are purchasing for investment purposes and not with the view to, or for sales in connection with, a distribution of the security. Any resale of a security sold in reliance on this exemption within twelve months of sale shall be presumed to be made with a view to distribute and not to invest, except a resale pursuant to a registration statement effective under section 485-8, or to an accredited investor pursuant to an exemption available under chapter 485;
- (B) The exemption under this paragraph shall not apply to an issuer if the issuer; any affiliated issuer; any beneficial owner of ten per cent or more of any class of the issuer's equity securities; any issuer's predecessor, director, officer, general partner, or promoter presently connected in any capacity with the issuer; and any underwriter or partner, director, or officer of the underwriter of the securities to be offered:
  - (i) Within the last five years has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;
  - (ii) Within the last five years has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;
  - (iii) Is currently subject to any state or federal administrative enforcement order or judgment entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or
  - (iv) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security;
- (C) Subparagraph (B) shall not apply if:
  - (i) The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against ~~such~~ the party;
  - (ii) Before the first offer under this exemption, the commissioner, or the court or regulatory authority that entered the order, judgment, or decree waives the disqualifications; or
  - (iii) The issuer establishes that the issuer did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this paragraph;
- (D) An issuer claiming the exemption under this section, within fifteen days after the first sale in this State, shall file with the commissioner a notice of transaction, a consent to service of process, a copy of the general announcement as required by section 485-24.6, and a \$200 filing fee; and
- (E) For the purposes of this paragraph, "accredited investor" shall have the same meaning as provided in 17 Code of Federal Regulations section 230.501(a);

- (17) Any offer or sale of a security effected by a resident of Canada who is excluded from the definition of "dealer" under section 485-1(3)(E);
- (18) Any transaction that is exempt or would be exempt under rule 701, 17 Code of Federal Regulations section 230.701, promulgated under section 3(b) of the Securities Act of 1933;
- (19) Any offer or sale of securities made in compliance with rules 501, 502, 503, and 505 of Regulation D, 17 Code of Federal Regulations sections 230.501, 230.502, 230.503, 230.505, 230.507, and 230.508 under the Securities Act of 1933; and
- (20) Any transaction that the commissioner may exempt, conditionally or unconditionally, by rules adopted in accordance with chapter 91 that:
  - (A) Furthers the objectives of compatibility with exemptions from securities registration authorized by the Securities Act of 1933 and uniformity among the states; or
  - (B) The commissioner finds that registration is not necessary or appropriate in the public interest for the protection of investors.'

SECTION 2. Act 164, Session Laws of Hawaii 2004, is amended by amending section 17 to read as follows:

"SECTION 17. Section 485-6, Hawaii Revised Statutes, is amended to read as follows:

"**§485-6 Exempt transactions.** The following transactions shall be exempt from sections 485-4.5, 485-8, and 485-25(a)(7):

- (1) Any isolated nonissuer transaction, whether effected through a dealer or not;
- (2) Any nonissuer transaction in an outstanding security if the manual of Hawaiian securities or any other recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years (or during the existence of the issuer and any predecessors if less than three years) in the payment of principal, interest, or dividends on the security;
- (3) Any nonissuer transaction effected by or through a registered dealer pursuant to an unsolicited order or offer to buy;
- (4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;
- (5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;
- (6) Any transaction by a personal representative, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;
- (7) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter;
- (8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial

institution or institutional buyer, or to a dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

- (9) Any transaction pursuant to an offer to sell securities of an issuer, if the transaction is part of an issue which:
  - (A) There are no more than twenty-five offerees, wherever located (other than those designated in paragraph (8)) during any twelve consecutive months;
  - (B) The issuer reasonably believes that all purchasers, wherever located, (other than those designated in paragraph (8)), are purchasing for investment;
  - (C) No commission, discount, or other remuneration is paid or given, directly or indirectly, to a person, other than a dealer or agent registered under this chapter, for soliciting a prospective purchaser in this State; and
  - (D) The securities of the issuer are not offered or sold by general solicitation or any general advertisement or other advertising medium;
- (10) Any offer or sale of a preorganization certificate or subscription for any security to be issued by any person if no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, and the number of subscribers does not exceed twenty-five;
- (11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within ninety days of their issuance, if no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in the State;
- (12) Any offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933, if no stop order or refusal order is in effect and no public proceeding or examination looking toward the order is pending under either this chapter or the Act;
- (13) Any offer or sale, by or through a real estate broker or real estate salesperson licensed under the laws of the State, of a security issued on or after July 1, 1961, by a corporation organized under the laws of the State, the holder of which is entitled solely by reason of the holder's ownership thereof, to occupy for dwelling purposes, or to a lease [which] that entitles the holder to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by the corporation, subject, however, to section 485-7;
- (14) ~~[Any offer or sale by or through a real estate broker or real estate salesperson licensed under the laws of the State of an apartment in a condominium project, and a rental management contract relating to the apartment, including an interest in a general or limited partnership formed for the purpose of managing the rental of apartments if the rental management contract or the interest in the general or limited partnership is offered at the same time as the apartment is offered. The words "unit", "condominium", and "project" are defined as they are defined in section — 3;] Any offer or sale, by or through a real estate broker or real estate salesperson licensed under the laws of the State, of a rental management contract relating to an apartment rental program in a condominium project, with or without the offer or sale of an apartment in the condominium project, including an interest in a legal entity formed for the purpose of managing or operating the rental of apart-~~

ments or the apartment rental program in the condominium project. The words “unit”, “condominium”, and “project” shall have the same meanings as in section -3;

- (15) Any transactions not involving a public offering within the meaning of section 4(2) of the Securities Act of 1933;
- (16) (A) Any transactions involving the offer or sale of a security by an issuer to an accredited investor that meet the following requirements:
- (i) The issuer reasonably believes that the sale is to persons who are accredited investors;
  - (ii) The issuer is not in the development stage, without specific business plan or purpose;
  - (iii) The issuer has not indicated that the issuer’s business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person; and
  - (iv) The issuer reasonably believes that all purchasers are purchasing for investment purposes and not with the view to, or for sales in connection with, a distribution of the security. Any resale of a security sold in reliance on this exemption within twelve months of sale shall be presumed to be made with a view to distribute and not to invest, except a resale pursuant to a registration statement effective under section 485-8, or to an accredited investor pursuant to an exemption available under chapter 485;
- (B) The exemption under this paragraph shall not apply to an issuer if the issuer; any affiliated issuer; any beneficial owner of ten per cent or more of any class of the issuer’s equity securities; any issuer’s predecessor, director, officer, general partner, or promoter presently connected in any capacity with the issuer; and any underwriter or partner, director, or officer of the underwriter of the securities to be offered:
- (i) Within the last five years has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;
  - (ii) Within the last five years has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;
  - (iii) Is currently subject to any state or federal administrative enforcement order or judgment entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or
  - (iv) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security;
- (C) Subparagraph (B) shall not apply if:
- (i) The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against [sueh] the party;

- (ii) Before the first offer under this exemption, the commissioner, or the court or regulatory authority that entered the order, judgment, or decree waives the disqualifications; or
- (iii) The issuer establishes that the issuer did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this paragraph;
- (D) An issuer claiming the exemption under this section, within fifteen days after the first sale in this State, shall file with the commissioner a notice of transaction, a consent to service of process, a copy of the general announcement as required by section 485-24.6, and a \$200 filing fee; and
- (E) For the purposes of this paragraph, "accredited investor" shall have the same meaning as provided in 17 Code of Federal Regulations section 230.501(a);
- (17) Any offer or sale of a security effected by a resident of Canada who is excluded from the definition of "dealer" under section 485-1(3)(E);
- (18) Any transaction that is exempt or would be exempt under rule 701, 17 Code of Federal Regulations section 230.701, promulgated under section 3(b) of the Securities Act of 1933;
- (19) Any offer or sale of securities made in compliance with rules 501, 502, 503, 505, and 506 of Regulation D, 17 Code of Federal Regulations sections 230.501, 230.502, 230.503, 230.505, 230.506, 230.507, and 230.508 under the Securities Act of 1933; and
- (20) Any transaction that the commissioner may exempt, conditionally or unconditionally, by rules adopted in accordance with chapter 91 that:
  - (A) Furthers the objectives of compatibility with exemptions from securities registration authorized by the Securities Act of 1933 and uniformity among the states; or
  - (B) The commissioner finds that registration is not necessary or appropriate in the public interest for the protection of investors.'''

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2005; provided that if section 17 of Act 164, Session Laws of Hawaii 2004, takes effect on July 1, 2005, section 1 of this Act shall be repealed.

(Approved June 2, 2005.)

**ACT 89**

S.B. NO. 1349

A Bill for an Act Relating to Condominium Property Regimes.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 514A-83.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts, and invoices of the association of apartment owners for the ~~[current and prior year]~~ duration those



records are kept by the association and delinquencies of ninety days or more shall be available for examination by apartment owners at convenient hours at a place designated by the board; provided[;] that:

- (1) [~~That the~~] The board may require owners to furnish to the association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interests of the association, or its members, or both; and
- (2) [~~That owners~~] Owners pay for administrative costs in excess of eight hours per year.

Copies of these items shall be provided to any owner upon the owner's request[;]; provided that the owner [pay] pays a reasonable fee for [~~duplicating;~~] duplication, postage, stationery, and other administrative costs associated with handling the request."

SECTION 2. Section 2 of Act 164, Session Laws of Hawaii 2004, is amended by amending subsection (c) of section -154 to read as follows:

“(c) Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts, and invoices of the association for the [~~current and prior year~~] duration those records are kept by the association and delinquencies of ninety days or more shall be available for examination by unit owners at convenient hours at a place designated by the board; provided that:

- (1) The board may require owners to furnish to the association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interests of the association or its members or both; and
- (2) Owners shall pay for administrative costs in excess of eight hours per year.

Copies of these items shall be provided to any owner upon the owner's request[;]; provided that the owner pays a reasonable fee for [~~duplicating;~~] duplication, postage, stationery, and other administrative costs associated with handling the request."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2005; provided that section 2 shall take effect on the effective date of section 2 of Act 164, Session Laws of Hawaii 2004.

(Approved June 2, 2005.)

## ACT 90

S.B. NO. 1348

A Bill for an Act Relating to Condominium Property Regimes.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 514A-83.5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The association's most current financial statement [~~and minutes of the board of directors' meetings, once approved;~~] shall be available to any owner at no

## ACT 90

cost or on ~~[twenty-four hour]~~ twenty-four-hour loan, at a convenient location designated by the board of directors. The meeting minutes of the board of directors, once approved, for the current and prior year shall either:

- (1) Be available for examination by apartment owners at no cost or on twenty-four-hour loan at a convenient location at the project, to be determined by the board of directors; or
- (2) Be transmitted to any apartment owner making a request for the minutes, by the board of directors, the managing agent, or the association's representative, within fifteen days of receipt of the request; provided that the minutes shall be transmitted by mail, electronic mail transmission, or facsimile, by the means indicated by the owner, if the owner indicated a preference at the time of the request; and provided further that the owner shall pay a reasonable fee for administrative costs associated with handling the request.

Costs incurred by apartment owners pursuant to this subsection shall be subject to section 514A-92.5.

~~(b) [Minutes of meetings of the board of directors and the association for the current and prior year shall be available for examination by apartment owners at convenient hours at a place designated by the board.] Minutes of board meetings shall include the recorded vote of each board member on all motions except motions voted on in executive session. [Copies of meeting minutes shall be provided to any owner upon the owner's request provided that the owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.]~~

SECTION 2. Section 2 of Act 164, Session Laws of Hawaii 2004, is amended by amending section -154, Hawaii Revised Statutes, to read as follows:

**“§ -154 Association records; availability; disposal; prohibitions.** (a) The association's most current financial statement ~~[and minutes of the board's meetings, once approved,]~~ shall be provided to any interested unit owner at no cost or on ~~[twenty-four hour]~~ twenty-four-hour loan, at a convenient location designated by the board. The meeting minutes of the board of directors, once approved, for the current and prior year shall either:

- (1) Be available for examination by apartment owners at no cost or on twenty-four-hour loan at a convenient location at the project, to be determined by the board of directors; or
- (2) Be transmitted to any apartment owner making a request for the minutes, by the board of directors, the managing agent, or the association's representative, within fifteen days of receipt of the request; provided that the minutes shall be transmitted by mail, electronic mail transmission, or facsimile, by the means indicated by the owner, if the owner indicated a preference at the time of the request; and provided further that the owner shall pay a reasonable fee for administrative costs associated with handling the request.

Costs incurred by apartment owners pursuant to this subsection shall be subject to section -105(d).

~~[(b) Minutes of meetings of the board and the association for the current and prior year shall be available for examination by unit owners at convenient hours at a place designated by the board. A copy of meeting minutes shall be provided to any owner upon the owner's request provided that the owner pays a reasonable fee for duplication and postage.~~

(e) (b) Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts, and invoices

of the association for the current and prior year and delinquencies of ninety days or more shall be available for examination by unit owners at convenient hours at a place designated by the board; provided that:

- (1) The board may require owners to furnish to the association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interests of the association or its members or both; and
- (2) Owners shall pay for administrative costs in excess of eight hours per year.

Copies of these items shall be provided to any owner upon the owner's request, provided that the owner pays a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

~~[(d)]~~ (c) After any association meeting, and not earlier, unit owners shall be permitted to examine proxies, tally sheets, ballots, owners' check-in lists, and the certificate of election; provided that:

- (1) Owners shall make a request to examine the documents within thirty days after the association meeting;
- (2) The board may require owners to furnish to the association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interest of the association or its members or both; and
- (3) Owners shall pay for administrative costs in excess of eight hours per year.

If there are no requests to examine proxies and ballots, the documents may be destroyed thirty days after the association meeting. If there are requests to examine proxies and ballots, the documents shall be kept for an additional sixty days, after which they may be destroyed. Copies of tally sheets, owners' check-in lists, and the certificates of election from the most recent association meeting shall be provided to any owner upon the owner's request, provided that the owner pays a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

~~[(e)]~~ (d) The managing agent shall provide copies of association records maintained pursuant to this section and sections -152 and -153 to owners, prospective purchasers and their prospective agents during normal business hours, upon payment to the managing agent of a reasonable charge to defray any administrative or duplicating costs. If the project is not managed by a managing agent, the foregoing requirements shall be undertaken by a person or entity, if any, employed by the association, to whom this function is delegated.

~~[(f)]~~ (e) Prior to the organization of the association, any unit owner shall be entitled to inspect as well as receive a copy of the management contract from the entity that manages the operation of the property.

~~[(g)]~~ (f) Owners may file a written request with the board to examine other documents. The board shall give written authorization or written refusal with an explanation of the refusal within thirty calendar days of receipt of the request.

~~[(h)]~~ (g) An association may comply with this part by making information available to unit owners, at the option of each unit owner, and at no cost, for downloading the information through an Internet site.

~~[(i)]~~ (h) A managing agent retained by one or more associations may dispose of the records of any association which are more than five years old, except for tax records, which shall be kept for seven years, without liability if the managing agent first provides the board of the association affected with written notice of the managing agent's intent to dispose of the records if not retrieved by the board within sixty days, which notice shall include an itemized list of the records proposed to be disposed.

## ACT 91

~~(j)~~ (i) No person shall knowingly make any false certificate, entry, or memorandum upon any of the books or records of any managing agent or association. No person shall knowingly alter, destroy, mutilate, or conceal any books or records of a managing agent or association.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval; provided that section 2 of this Act shall take effect when section 2 of Act 164, Session Laws of Hawaii 2004, takes effect.

(Approved June 2, 2005.)

## ACT 91

S.B. NO. 1336

A Bill for an Act Relating to Condominiums and Cooperative Housing Corporations.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 514C-8, Hawaii Revised Statutes, is amended to read as follows:

“**§514C-8 Exception.** (a) This part shall not apply if the land under the condominium project or cooperative housing corporation subject to a leased fee interest is part of a larger tract of land and the lessor will not agree to sell the leased fee interest in the land in parts.

(b) If the land under the condominium is owned jointly by lessors, all of whom qualify as tax-exempt charitable organizations as defined by section 501(c)(3) of the Internal Revenue Code of 1986, as amended, the sale by one co-lessor to another co-lessor of its interest in the land under the condominium shall not be subject to the provisions of this chapter.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 2, 2005.)

## ACT 92

S.B. NO. 1345

A Bill for an Act Relating to Condominiums.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 514A-121.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If a dispute is not resolved by mediation as provided in subsection (a), in addition to any other legal remedies that may be available, any party that participated in the mediation may file a request for a hearing with the office of administrative hearings, department of commerce and consumer affairs,<sup>1</sup> as follows:

- (1) The party requesting the hearing must be a board of directors of a duly registered association of apartment owners, or an apartment owner that is a member of a duly registered association pursuant to section 514A-95.1;
- (2) The request for hearing must be filed within thirty days from the final day of mediation;
- (3) The request for hearing must name one or more parties that participated in the mediation as an adverse party and identify the statutory provisions in dispute; and
- (4) ~~[No dispute arising out of section 514A-82(b)(1) to (13), section 514A-82.3, section 514A-82.5, section 514A-82.6, section 514A-83.1(b), section 514A-83.4(e), or relating to the interpretation or application of any association of owners' declaration, bylaws, or house rules may be the subject of any request for hearing under this section.]~~ The subject matter of the hearing before the hearing officer may include any matter that was the subject of the mediation pursuant to subsection (a)."

SECTION 2. This Act shall not apply to any claims arising prior to its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5.<sup>2</sup> This Act shall take effect on July 1, 2005.

(Approved June 2, 2005.)

Notes

1. Comma should be underscored.
2. So in original.

ACT 93

S.B. NO. 1132

A Bill for an Act Relating to Condominiums.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 164, Session Laws of Hawaii 2004, section 2, is amended by adding a new definition to section -3, Hawaii Revised Statutes, to be appropriately inserted and to read as follows:

““Structures” includes buildings.”

SECTION 2. Act 164, Session Laws of Hawaii 2004, section 2, is amended by amending part III of chapter , Hawaii Revised Statutes, to read as follows:

**“PART III. CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS [(RESERVED)]**

§ -31 Creation. (a) To create a condominium property regime, all of the owners of the fee simple interest in land shall execute and record a declaration submitting the land to the condominium property regime. Upon recordation of the master deed together with a declaration, the condominium property regime shall be deemed created.

(b) The condominium property regime shall be subject to any right, title, or interest existing when the declaration is recorded if the person who owns the right, title, or interest does not execute or join in the declaration or otherwise subordinate the right, title, or interest. A person with any other right, title, or interest in the land may subordinate that person's interest to the condominium property regime by executing the declaration, or by executing and recording a document joining in or subordinating to the declaration.

§ -32 Contents of declaration. (a) A declaration shall describe or include the following:

- (1) The land submitted to the condominium property regime;
- (2) The number of the condominium property regime map filed concurrently with the declaration;
- (3) The number of units in the condominium property regime;
- (4) The unit number of each unit and common interest appurtenant to each unit;
- (5) The number of buildings and projects in the condominium property regime, and the number of stories and units in each building;
- (6) The permitted and prohibited uses of each unit;
- (7) To the extent not shown on the condominium property regime map, a description of the location and dimensions of the horizontal and vertical boundaries of any unit. Unit boundaries may be defined by physical structures or, if a unit boundary is not defined by a physical structure, by spatial coordinates;
- (8) The condominium property regime's common elements;
- (9) The condominium property regime's limited common elements, if any, and the unit or units to which each limited common element is appurtenant;
- (10) The total percentage of the common interest that is required to approve rebuilding, repairing, or restoring the condominium property regime if it is damaged or destroyed;
- (11) The total percentage of the common interest, and any other approvals or consents, that are required to amend the declaration. Except as otherwise specifically provided in this chapter, and except for any amendments made pursuant to reservations set forth in paragraph (12), the approval of the owners of at least sixty-seven per cent of the common interest shall be required for all amendments to the declaration;
- (12) Any rights that the developer or others reserve regarding the condominium property regime, including, without limitation, any development rights, and any reservations to modify the declaration or condominium property regime map. An amendment to the declaration made pursuant to the exercise of those reserved rights shall require only the consent or approval, if any, specified in the reservation; and
- (13) A declaration, subject to the penalties set forth in section -69(b), that the condominium property regime is in compliance with all zoning and building ordinances and codes, and all other permitting requirements pursuant to section -5, and specifying in the case of a property that includes one or more existing structures being converted to condominium property regime status:
  - (A) Any variances that have been granted to achieve the compliance; and
  - (B) Whether, as the result of the adoption or amendment of any ordinances or codes, the project presently contains any legal nonconforming conditions, uses, or structures; except that a

property that is registered pursuant to section -51 shall instead provide this declaration pursuant to section -54. If a developer is converting a structure to condominium property regime status and the structure is not in compliance with all zoning and building ordinances and codes, and all other permitting requirements pursuant to section -5, and the developer intends to use purchaser's funds pursuant to the requirements of section -92 or -93 to cure the violation or violations, then the declaration required by this paragraph may be qualified to identify with specificity each violation and the requirement to cure the violation by a date certain.

(b) The declaration may contain any additional provisions that are not inconsistent with this chapter.

**§ -33 Condominium property regime map.** (a) A condominium property regime map shall be recorded with the declaration. The condominium property regime map shall contain the following:

- (1) A site plan for the condominium property regime, depicting the location, layout, and access to a public road of all buildings and projects included or anticipated to be included in the condominium property regime, and depicting access for the units to a public road or to a common element leading to a public road;
- (2) Elevations and floor plans of all buildings in the condominium property regime;
- (3) The layout, location, boundaries, unit numbers, and dimensions of the units;
- (4) To the extent that there is parking in the condominium property regime, a parking plan for a project, showing the location, layout, and stall numbers of all parking stalls included in the project and the condominium property regime;
- (5) Unless specifically described in the declaration, the layout, location, and numbers or other identifying information of the limited common elements, if any; and
- (6) A description in sufficient detail, as may be determined by the commission, to identify any land area that constitutes a limited common element.

(b) The condominium property regime map may contain any additional information that is not inconsistent with this chapter.

**§ -34 Condominium property regime map; certification of architect, engineer, or surveyor.** (a) The condominium property regime map shall bear the statement of a licensed architect, engineer, or surveyor certifying that the condominium property regime map is consistent with the plans of the condominium's building or buildings filed or to be filed with the government official having jurisdiction over the issuance of permits for the construction of buildings in the county in which the condominium property regime is located. If the building or buildings have been built at the time the condominium property regime map is recorded, the certification shall state that, to the best of the architect's, engineer's, or surveyor's knowledge, the condominium property regime map depicts the layout, location, dimensions, and numbers of the units substantially as built. If the building or buildings, or portions thereof, have not been built at the time the condominium property regime map is recorded, within thirty days from the completion of construction, the developer shall execute and record an amendment to the declaration accompanied by a certification of a licensed architect, engineer, or surveyor certifying that the condominium

property regime map previously recorded, as amended by the revised pages filed with the amendment, if any, fully and accurately depicts the layout, location, boundaries, dimensions, and numbers of the units substantially as built.

(b) If the condominium property regime is a conversion and the government official having jurisdiction over the issuance of permits for the construction of buildings in the county in which the condominium property regime is located is unable to locate the original permitted construction plans, the certification need only state that the condominium property regime map depicts the layout, location, boundaries, dimensions, and numbers of the units substantially as built. If there are no buildings, no certification shall be required.

**§ -35 Unit boundaries.** Except as provided by the declaration:

- (1) If walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings, are a part of the common elements;
- (2) If any chute, flue, duct, wire, conduit, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element appurtenant solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements;
- (3) Subject to paragraph (2), all spaces, interior non-loadbearing partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit; and
- (4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, lanais, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but are located outside the unit's boundaries, are limited common elements appurtenant exclusively to that unit.

**§ -36 Leasehold units.** An undivided interest in the land that is subject to a condominium property regime equal to a unit's common interest may be leased to the unit owner, and the unit and its common interest in the common elements exclusive of the land may be conveyed to the unit owner. The conveyance of the unit with an accompanying lease of an interest in the land shall not constitute a division or partition of the common elements, or a separation of the common interest from its unit. Where a deed of a unit is accompanied by a lease of an interest in the land, the deed shall not be construed as conveying title to the land included in the common elements.

**§ -37 Common interest.** Each unit shall have the common interest it is assigned in the declaration. Except as provided in sections -32(a)(12), -46, and -140(d) and except as provided in the declaration, a unit's common interest shall be permanent and remain undivided, and may not be altered or partitioned without the consent of the owner of the unit and the owner's mortgagee, expressed in a duly executed and recorded declaration amendment. The common interest shall not be separated from the unit to which it appertains, and shall be deemed to be conveyed or encumbered with the unit even if the common interest is not expressly mentioned or described in the conveyance or other instrument.



§ -38 Common elements. Each unit owner may use the common elements in accordance with the purposes permitted under the declaration, subject to:

- (1) The rights of other unit owners to use the common elements;
- (2) Any owner's exclusive right to use of the limited common elements as provided in the declaration;
- (3) The right of the owners to amend the declaration to change the permitted uses of the common elements or to designate any portion of the common elements as a limited common element;
- (4) Any rights reserved in the declaration to amend the declaration to change the permitted uses of the common elements;
- (5) The right of the board, on behalf of the association, to lease or otherwise use for the benefit of the association those common elements that the board determines are not actually used by any of the unit owners for a purpose permitted in the declaration. Unless the lease is approved by the owners of at least sixty-seven per cent of the common interest, the lease shall have a term of no more than five years and may be terminated by the board or the lessee on no more than sixty days prior written notice; and
- (6) The right of the board, on behalf of the association, to lease or otherwise use for the benefit of the association those common elements that the board determines are actually used by one or more unit owners for a purpose permitted in the declaration. The lease or use shall be approved by the owners of at least sixty-seven per cent of the common interest, including all directly affected unit owners that the board reasonably determines actually use the common elements, and the owners' mortgagees.

§ -39 Limited common elements. If the declaration designates any portion of the common elements as limited common elements, those limited common elements shall be subject to the exclusive use of the owner or owners of the unit or units to which they are appurtenant, subject to the provisions of the declaration and bylaws. No amendment of the declaration affecting any of the limited common elements shall be effective without the consent of the owner or owners of the unit or units to which the limited common elements are appurtenant.

§ -40 Transfer of limited common elements. Except as provided in the declaration, any unit owner may transfer or exchange a limited common element that is assigned to the owner's unit to another unit. Any transfer shall be executed and recorded as an amendment to the declaration. The amendment need only be executed by the owner of the unit whose limited common element is being transferred and the owner of the unit receiving the limited common element; provided that unit mortgages and leases may also require the consent of mortgagees or lessors, respectively, of the units involved. A copy of the amendment shall be promptly delivered to the association.

§ -41 Common profits and expenses. (a) The common profits of the property shall be distributed among, and the common expenses shall be charged to, the unit owners, including the developer, in proportion to the common interest appurtenant to their respective units, except as otherwise provided in the declaration or bylaws. In a mixed-use project containing units for both residential and nonresidential use, the charges and distributions may be apportioned in a fair and equitable manner as set forth in the declaration. Except as otherwise provided in subsection (c) or the declaration or bylaws, all limited common element costs and expenses, including but not limited to maintenance, repair, replacement, additions, and im-

provements, shall be charged to the owner or owners of the unit or units to which the limited common element is appurtenant in an equitable manner as set forth in the declaration.

(b) A unit owner, including the developer, shall become obligated for the payment of the share of the common expenses allocated to the owner's unit at the time the certificate of occupancy relating to the owner's unit is issued by the appropriate county agency; provided that a developer may assume all the actual common expenses in a project by stating in the developer's public report required by section -54 that the unit owner shall not be obligated for the payment of the owner's share of the common expenses until such time as the developer sends the owners written notice that, after a specified date, the unit owners shall be obligated to pay for the portion of common expenses that is allocated to their respective units. The developer shall mail the written notice to the owners, the association, and the managing agent, if any, at least thirty days before the specified date.

(c) Unless otherwise provided in the declaration or bylaws, if the board reasonably determines that the extra cost incurred to separately account for and charge for the costs of maintenance, repair, or replacement of limited common elements is not justified, the board may adopt a resolution determining that certain limited common element expenses will be assessed in accordance with the undivided common interest appurtenant to each unit. In reaching its determination, the board shall consider:

- (1) The amount at issue;
- (2) The difficulty of segregating the costs;
- (3) The number of units to which similar limited common elements are appurtenant;
- (4) The apparent difference between separate assessment and assessment based on the undivided common interest; and
- (5) Any other relevant factors, as determined by the board.

The resolution shall be final and binding in the absence of a determination that the board abused its discretion.

(d) Unless made pursuant to rights reserved in the declaration and disclosed in the developer's public report, if an association amends its declaration or bylaws to change the use of the condominium property regime from residential to nonresidential, all direct and indirect costs attributable to the newly permitted nonresidential use shall be charged only to the unit owners using or directly benefiting from the new nonresidential use, in a fair and equitable manner as set forth in the amendment to the declaration or bylaws.

**§ -42 Metering of utilities.** (a) Units in a project that includes units designated for both residential and nonresidential use shall have separate meters, or calculations shall be made, or both, as may be practicable, to determine the use by the nonresidential units of utilities, including electricity, water, gas, fuel, oil, sewerage, air conditioning, chiller water, and drainage, and the cost of such utilities shall be paid by the owners of the nonresidential units; provided that the apportionment of the charges among owners of nonresidential units shall be done in a fair and equitable manner as set forth in the declaration or bylaws. The requirements of this subsection shall not apply to projects for which construction commenced before January 1, 1978.

(b) Subject to any approval requirements and spending limits contained in a project's declaration or bylaws, a board may authorize the installation of meters to determine the use by the individual units of utilities, including electricity, water, gas, fuel, oil, sewerage, air conditioning, chiller water, and drainage. The cost of metered utilities shall be paid by the owners of the units based on actual consumption and, to the extent not billed directly to the unit owner by the utility provider, may be

collected in the same manner as common expense assessments. Owners' maintenance fees shall be adjusted as necessary to avoid any duplication of charges to owners for the cost of metered utilities.

**§ -43 Liens against units.** (a) For purposes of this section:

- (1) "Visible commencement of operations" shall have the meaning it has in section 507-41; and
- (2) "Lien" means a lien created pursuant to chapter 507, part II.

(b) If visible commencement of operations occurs prior to the creation of the condominium, then, upon creation of the condominium, liens arising from this work shall attach to all units in the condominium described in the declaration and their respective undivided interests in the common elements, but not to the common elements as a whole. If visible commencement of operations occurs after creation of the condominium, then liens arising from this work shall attach only to the unit or units described in the declaration on which the work was performed in the same manner as other real property, and shall not attach to the common elements.

(c) If the developer contracts for work on the common elements, either on its behalf or on behalf of the association prior to the first meeting of the association, then liens arising from this work may attach to all units owned by the developer described in the declaration at the time of visible commencement of operations.

(d) If the association contracts for work on the common elements after the first meeting of the association, there shall be no lien on the common elements, but the persons contracting with the association to perform the work or supply the materials incorporated in the work shall be entitled to their contractual remedies, if any.

**§ -44 Contents of deeds or leases of units.** Deeds or leases of units adequately describe the property conveyed or leased if they contain the following information:

- (1) The title and date of the declaration and the declaration's bureau of conveyances or land court document number or liber and page numbers;
- (2) The unit number of the unit conveyed or leased;
- (3) The common interest appurtenant to the unit conveyed or leased; provided that the common interest shall be deemed to be conveyed or encumbered with the unit even if the common interest is not expressly mentioned in the conveyance or other instrument, as provided in section -37;
- (4) For a unit, title to which is registered in the land court, the land court certificate of title number for the unit, if available; and
- (5) For a unit, title to which is not registered in the land court, the bureau of conveyances document number or liber and page numbers for the instrument by which the grantor acquired title.

Deeds or leases of units may contain additional information and details deemed desirable and consistent with the declaration and this chapter, including without limitation a statement of any encumbrances on title to the unit that are not listed in the declaration. The failure of a deed or lease to include all of the information specified in this section shall not render it invalid.

**§ -45 Blanket mortgages and other blanket liens affecting a unit at time of first conveyance or lease.** At the time of the first conveyance or lease of each unit, every mortgage and other lien, except any improvement district or utility assessment, affecting both the unit and any other unit shall be paid and satisfied of

record, or the unit being conveyed or leased and its common interest shall be released therefrom by a duly recorded partial release.

**§ -46 Merger of projects or increments.** (a) Two or more projects, or increments of a project, whether or not adjacent to one another, but that are part of the same incremental plan of development and in the same vicinity, may be merged together so as to permit the joint use of the common elements of the projects by all the owners of the units in the merged projects. A merger may be implemented with the vote or consent that the declaration requires for a merger, pursuant to any reserved rights set forth in the declaration, or upon vote of sixty-seven per cent of the common interest.

(b) A merger becomes effective at the earlier of:

- (1) A date certain set forth in the certificate of merger; or
- (2) The date that the certificate of merger is recorded.

The certificate of merger may provide for a single association and board for the merged projects and for a sharing of the common expenses of the projects among all the owners of the units in the merged projects. The certificate of merger may also provide for a merger of the common elements of the projects so that each unit owner in the merged projects has an undivided ownership interest in the common elements of the merged projects. In the event of a merger of common elements, the common interests of each unit in the merged projects shall be adjusted in accordance with the merger provisions in the projects' declarations so that the total common interests of all units in the resulting merged project totals one hundred per cent. If the certificate of merger does not provide for a merger of the common elements, the common elements and common interests of the merged projects shall remain separate, but shall be subject to the provisions set forth in the respective declarations with respect to merger.

(c) Upon the recording of a certificate of merger that indicates that the fee simple title to the lands of the merged projects are merged, the registrar shall cancel all existing certificates of title for the units in the projects being merged and shall issue new certificates of title for the units in the merged project, covering all of the land of the merged projects. The new certificates of title for the units in the merged project shall describe, among other things, each unit's new common interest. The certificate of merger shall at least set forth all of the units of the merged projects, their new common interests, and to the extent practicable, their current certificate of title numbers in the common elements of the merged projects.

(d) In the event of a conflict between declarations and bylaws upon the merger of projects or increments, unless otherwise provided in the certificate of merger, the provisions of the first declaration and bylaws recorded shall control.

**§ -47 Removal from provisions of this chapter.** (a) If:

- (1) Owners of units to which are appurtenant at least eighty per cent of the common interests execute and record an instrument to the effect that they desire to remove the property from this chapter, and the holders of all liens affecting any of such units consent thereto by duly recorded instruments; or
- (2) The common elements suffer substantial damage or destruction and the damage or destruction has not been rebuilt, repaired, or restored within a reasonable time after the occurrence thereof, or the unit owners have earlier determined as provided in the declaration that the damage or destruction shall not be rebuilt, repaired, or restored;

the property shall be subject to an action for partition by any unit owner or lienor as if owned in common, in which event the sale of the property shall be ordered by the court and the net proceeds of sale, together with the net proceeds of the insurance on

the property, if any, shall be considered as one fund and, except as otherwise provided in the declaration, shall be divided among all the unit owners in proportion to their respective common interests; provided that no payment shall be made to a unit owner until there has first been paid in full out of the owner's share of the net proceeds all liens on the owner's unit. Upon this sale, the property ceases to be a condominium property regime or subject to this chapter.

(b) All of the unit owners may remove a property, or a part of a property, from this chapter by an instrument to that effect, duly recorded, if the holders of all liens affecting any of the units consent thereto, by duly recorded instruments. Upon this removal from this chapter, the property, or the part of the property designated in the instrument, shall cease to be the subject of a condominium property regime or subject to this chapter, and shall be deemed to be owned in common by the unit owners in proportion to their respective common interests.

(c) Notwithstanding subsections (a) and (b), if the unit leases for a leasehold condominium property regime (including condominium conveyance documents, ground leases, or similar instruments creating a leasehold interest in the land) provide that:

- (1) The estate and interest of the unit owner shall cease and determine upon the acquisition, by an authority with power of eminent domain of title and right to possession of any part of the condominium property regime;
- (2) The unit owner shall not by reason of the acquisition or right to possession be entitled to any claim against the lessor or others for compensation or indemnity for the unit owner's leasehold interest;
- (3) All compensation and damages for or on account of any land shall be payable to and become the sole property of the lessor;
- (4) All compensation and damages for or on account of any buildings or improvements on the demised land shall be payable to and become the sole property of the unit owners of the buildings and improvements in accordance with their interests; and
- (5) The unit lease rents are reduced in proportion to the land so acquired or possessed;

the lessor and the developer shall file and record an amendment to the declaration to reflect any acquisition or right to possession. The consent or joinder of the unit owners or their respective mortgagees shall not be required, if the land acquired or possessed constitutes no more than five per cent of the total land of the condominium property regime. Upon the recordation of the amendment, the land acquired or possessed shall cease to be the subject of a condominium property regime or subject to this chapter. The lessor shall notify each unit owner in writing of the filing of the amendment and the rent abatement, if any, to which the unit owner is entitled. The lessor shall provide the association, through its board, with a copy of the recorded amendment.

(d) For purposes of subsection (c), the acquisition or right to possession may be effected:

- (1) By a taking or condemnation of property by the State or a county pursuant to chapter 101;
- (2) By the conveyance of property to the State or county under threat of condemnation; or
- (3) By the dedication of property to the State or county if the dedication is required by state law or county ordinance.

(e) The removal provided for in this section shall in no way bar the subsequent resubmission of the property to the requirements of this chapter."

SECTION 3. Act 164, Session Laws of Hawaii 2004, section 2, is amended by amending part IV of chapter \_\_\_\_\_, Hawaii Revised Statutes, to read as follows:

**“PART IV. REGISTRATION AND ADMINISTRATION OF  
CONDOMINIUMS [~~(RESERVED)~~]**

§ -51 Registration required; exceptions. (a) A developer may not offer for sale any units in a project unless the project is registered with the commission and an effective date for the developer’s public report is issued by the commission.

(b) The registration requirement of this section shall not apply to:

- (1) The disposition of units exempted from the developer’s public report requirements pursuant to section \_\_\_\_\_-81(b);
- (2) Projects in which all units are restricted to nonresidential uses and all units are to be sold for \$1,000,000 or more; or
- (3) The sale of units in bulk, such as where a developer undertakes to develop and then sells all or a portion of the developer’s entire inventory of units to a purchaser who is a developer. The registration requirements of this section and the developer’s amended developer’s public report requirements of section \_\_\_\_\_-56 shall apply to any sale of units to the public following a sale of units in bulk.

§ -52 Application for registration. (a) An application for registration of a project shall:

- (1) Be accompanied by nonrefundable fees as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91; and
- (2) Contain the documents and information concerning the project and the condominium property regime as required by sections \_\_\_\_\_-54, \_\_\_\_\_-83, and \_\_\_\_\_-84, as applicable, and as otherwise may be specified by the commission.

(b) The commission need not process any incomplete application and may return an incomplete application to the developer and require that the developer submit a new application, including nonrefundable fees. If an incomplete application is not completed within six months of the date of the original submission, it shall be deemed abandoned and registration of the project shall require the submission of a new application, including nonrefundable fees.

(c) A developer shall promptly file amendments to report either any actual or expected pertinent or material change, or both, in any document or information contained in the application.

§ -53 Inspection by commission. (a) After appropriate notification has been made or additional information has been received pursuant to this part, an inspection of the project may be made by the commission.

(b) When an inspection is to be made of a project, the developer shall be required to pay an amount estimated by the commission to be necessary to cover the actual expenses of the inspection, not to exceed \$500 a day for each day consumed in the examination of the project, plus reasonable transportation expenses.

§ -54 Developer’s public report; requirements for issuance of effective date. (a) Prior to the issuance of an effective date for a developer’s public report, the commission shall have received the following:

- (1) Nonrefundable fees as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91;

- (2) The developer's public report prepared by the developer disclosing the information specified in section -83 and, if applicable, section -84;
- (3) A copy of the deed, master lease, agreement of sale, or sales contract evidencing either that the developer holds the fee or leasehold interest in the property or has a right to acquire the same;
- (4) Copies of the executed declaration, bylaws, and condominium map that meet the requirements of sections -32, -33, and -108;
- (5) A specimen copy of the proposed contract of sale for units;
- (6) An executed copy of an escrow agreement with a third party depository for retention and disposition of purchasers' funds that meets the requirements of section -91;
- (7) As applicable, the documents and information required in section -92 or -93;
- (8) A declaration, subject to the penalties set forth in section -69(b), that the project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to sections -5 and -32(a)(13); and
- (9) Other documents and information that the commission may require.

(b) The developer's public report shall not be used for the purpose of selling any units in the project until the commission issues an effective date for the developer's public report. The commission's issuance of an effective date for a developer's public report shall not be construed to constitute the commission's approval or disapproval of the project; the commission's representation that either all material facts or all pertinent changes, or both, concerning the project have been fully or adequately disclosed; or the commission's judgment of the value or merits of the project.

**§ -55 Developer's public report; request for hearing by developer.** If an effective date for a developer's public report is not issued within a reasonable time after compliance with registration requirements, or if the developer is materially grieved by the form or content of the developer's public report, the developer, in writing, may request and shall be given a hearing by the commission within a reasonable time after receipt of the request.

**§ -56 Developer's public report; amendments.** (a) After the effective date for a developer's public report has been issued by the commission, if there are any changes, either material or pertinent changes, or both, regarding the information contained in or omitted from the developer's public report, or if the developer desires to update or change the information set forth in the developer's public report, the developer shall immediately submit to the commission an amendment to the developer's public report or an amended developer's public report clearly reflecting the change, together with such supporting information as may be required by the commission, to update the information contained in the developer's public report, accompanied by nonrefundable fees as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. Within a reasonable period of time, the commission shall issue an effective date for the amended developer's public report or take other appropriate action under this part.

(b) The submission of an amendment to the developer's public report or an amended developer's public report shall not require the developer to suspend sales, subject to the power of the commission to order sales to cease as set forth in section -66; provided that the developer shall advise the appropriate real estate broker or brokers, if any, of the change and disclose to purchasers any change in the informa-

tion contained in the developer's public report pending the issuance of an effective date for any amendment to the developer's public report or amended developer's public report; and provided further that if the amended developer's public report is not issued within thirty days after its submission to the commission, the commission may order a suspension of sales pending the issuance of an effective date for the amended developer's public report. Nothing in this section shall diminish the rights of purchasers under section -94.

(c) The developer shall provide all purchasers with a true copy of:

(1) The amendment to the developer's public report, if the purchaser has received copies of the developer's public report and all prior amendments, if any; or

(2) A restated developer's public report, including all amendments.

(d) The filing of an amendment to the developer's public report or an amended developer's public report, in and of itself, shall not be grounds for a purchaser to cancel or rescind a sales contract. A purchaser's right to cancel or rescind a sales contract shall be governed by sections -86 and -87, the terms and conditions of the purchaser's contract for sale, and applicable common law.

§ -57 Commission oversight of developer's public report. (a) The commission at any time may require a developer to amend or supplement the form or substance of a developer's public report to assure adequate and accurate disclosure to prospective purchasers.

(b) The developer's public report shall not be used for any promotional purpose before registration, and may be used after registration only if it is used in its entirety. No person shall advertise or represent that the commission has approved or recommended the condominium project, the developer's public report, or any of the documents contained in the application for registration.

§ -58 Annual report. (a) A developer, its successor, or assign shall file annually a report to update the material contained in the developer's public report, together with the payment of nonrefundable fees, at least thirty days prior to the anniversary date of the effective date for a developer's public report. If there is no change to the developer's public report, the developer shall so state. This subsection shall not relieve the developer, its successor, or assign of the obligation to file amendments to the developer's public report pursuant to section -56. Failure to file the annual report required by this section may subject the developer to the penalties set forth in section -69(b).

(b) The developer, its successor, or assign shall be relieved from filing annual reports pursuant to this section when the initial sales of all units have been completed and the developer, its successor, or assign has no ownership interest in any unit in the project.

§ -59 Expiration of developer's public reports. Except as otherwise provided in this chapter, upon issuance of an effective date for a developer's public report or any amendment, the developer's public report and amendment or amendments shall not expire until such time as the developer has sold all units in the project.

§ -60 No false or misleading information. It shall be unlawful for any person or person's agent to testify falsely or make a material misstatement of fact before the commission or to file with the commission any document required by this chapter that is false, contains a material misstatement of fact, or that contains forgery. All documents shall be true, complete, and accurate in all respects, including the developer's public report, prepared by or for the developer and submitted to



the commission in connection with the developer's registration of the project, and all information contained in the documents, and shall not contain any misleading information, or omit any pertinent change in the information or documents submitted to the commission.

**§ -61 General powers and duties of commission.** (a) The commission may:

- (1) Adopt, amend, and repeal rules pursuant to chapter 91;
- (2) Assess fees;
- (3) Conduct investigations, issue cease and desist orders, and bring an action in any court of competent jurisdiction to enjoin persons, consistent with and in furtherance of the objectives of this chapter;
- (4) Prescribe forms and procedures for submitting information to the commission; and
- (5) Prescribe the form and content of any documents required to be submitted to the commission by this chapter.

(b) If it appears that any person has engaged, is engaging, or is about to engage in any act or practice in violation of this part, part V, section -103, -132, -134, -149, sections -152 to -154, or any of the commission's related rules or orders, the commission, without prior administrative proceedings, may maintain an action in the appropriate court to enjoin that act or practice or for other appropriate relief. The commission shall not be required to post a bond or to prove that no adequate remedy at law exists in order to maintain the action.

(c) The commission may exercise its powers in any action involving the powers or responsibilities of a developer under this part, part V, section -103, -132, -134, -149, or sections -152 to -154.

(d) The commission may accept grants-in-aid from any governmental source and may contract with agencies charged with similar functions in this or other jurisdictions, in furtherance of the objectives of this chapter.

(e) The commission may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices, and may develop information that may be useful in the discharge of the commission's duties.

(f) In issuing any cease and desist order or order rejecting or revoking the registration of a condominium project, the commission shall state the basis for the adverse determination and the underlying facts.

(g) The commission, by rule, may require bonding at appropriate levels over time, escrow of portions of sales proceeds, or other safeguards to assure completion of all improvements that a developer is obligated to complete, or has represented that it will complete.

**§ -62 Deposit of fees.** Unless otherwise provided in this chapter, all fees collected under this chapter shall be deposited by the director of commerce and consumer affairs to the credit of the compliance resolution fund established pursuant to section 26-9(o).

**§ -63 Condominium specialists; appointment; duties.** The director of commerce and consumer affairs may appoint condominium specialists, not subject to chapter 76, to assist consumers with information, advice, and referral on any matter relating to this chapter or otherwise concerning condominiums. The director may also appoint secretaries, not subject to chapter 76, to provide assistance in carrying out these duties. The condominium specialists and secretaries shall be members of the employees' retirement system of the State and shall be eligible to

receive the benefits of any state or federal employee benefit program generally applicable to officers and employees of the State.

§ -64 Private consultants. The director of commerce and consumer affairs may contract with private consultants for the review of documents and information submitted to the commission pursuant to this chapter. The cost of the review by private consultants shall be borne by the developer.

§ -65 Investigative powers. If the commission has reason to believe that any person is violating or has violated this part, part V, section -103, -132, -134, -149, sections -152 to -154, or the rules of the commission adopted pursuant thereto, the commission may conduct an investigation of the matter and examine the books, accounts, contracts, records, and files of all relevant parties. For purposes of this examination, the developer and the real estate broker shall keep and maintain records of all sales transactions and of the funds received by the developer and the real estate broker in accordance with chapter 467 and the rules of the commission, and shall make the records accessible to the commission upon reasonable notice and demand.

§ -66 Cease and desist orders. In addition to its authority under sections -67 and -68, whenever the commission has reason to believe that any person is violating or has violated this part, part V, section -103, -132, -134, -149, sections -152 to -154, or the rules of the commission adopted pursuant thereto, it may issue and serve upon the person a complaint stating its charges in that respect and containing a notice of a hearing at a stated place and upon a day at least thirty days after the service of the complaint. The person served has the right to appear at the place and time specified and show cause why an order should not be entered by the commission requiring the person to cease and desist from the violation of the law or rules charged in the complaint. If the commission finds that this chapter or the rules of the commission have been or are being violated, it shall make a report in writing stating its findings as to the facts and shall issue and cause to be served on the person an order requiring the person to cease and desist from the violations. The person, within thirty days after service upon the person of the report or order, may obtain a review thereof in the appropriate circuit court.

§ -67 Termination of registration. (a) The commission, after notice and hearing, may issue an order terminating the registration of a condominium project upon determination that a developer, or any officer, principal, or affiliate of a developer has:

- (1) Failed to comply with a cease and desist order issued by the commission affecting that condominium project;
- (2) Concealed, diverted, or disposed of any funds or assets of any person in a manner impairing rights of purchasers of units in that condominium project;
- (3) Failed to perform any stipulation or agreement made to induce the commission to issue an order relating to that condominium project;
- (4) Misrepresented or failed to disclose a material fact in the application for registration; or
- (5) Failed to meet any of the conditions described in this part necessary to qualify for registration.

(b) A developer may not convey, cause to be conveyed, or contract for the conveyance of any interest in a unit while an order revoking the registration of the condominium project is in effect, without the consent of the commission.

(c) The commission may issue a cease and desist order in lieu of an order of revocation where appropriate.

§ -68 Power to enjoin. Whenever the commission believes from satisfactory evidence that any person has violated this part, part V, section -103, -132, -134, -149, sections -152 to -154, or the rules of the commission adopted pursuant thereto, it may conduct an investigation of the matter and bring an action against the person in any court of competent jurisdiction on behalf of the State to enjoin the person from continuing the violation or doing any acts in furtherance thereof.

§ -69 Penalties. (a) Any person who violates or fails to comply with this part, part V, section -103, -132, -134, -149, or sections -152 to -154, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding \$10,000, or by imprisonment for a term not exceeding one year, or both. Any person who violates or fails to comply with any rule, order, decision, demand, or requirement of the commission under this part, part V, section -103, -132, -134, -149, or sections -152 to -154, shall be punished by a fine not exceeding \$10,000.

(b) In addition to any other actions authorized by law, any person who violates or fails to comply with this part, part V, section -103, -132, -134, -149, sections -152 to -154, or the rules of the commission adopted pursuant thereto, shall also be subject to a civil penalty not exceeding \$10,000 for any violation. Each violation shall constitute a separate offense.

§ -70 Limitation of actions. No civil or criminal actions shall be brought by the State pursuant to this chapter more than two years after the discovery of the facts upon which the actions are based or ten years after completion of the sales transaction involved, whichever has first occurred.

§ -71 Condominium education trust fund. (a) The commission shall establish a condominium education trust fund that the commission may use for educational purposes. Educational purposes shall include financing or promoting:

- (1) Education and research in the field of condominium management, condominium project registration, and real estate, for the benefit of the public and those required to be registered under this chapter;
- (2) The improvement and more efficient administration of associations; and
- (3) Expedient and inexpensive procedures for resolving association disputes.

(b) The commission may use any and all moneys in the condominium education trust fund for purposes consistent with subsection (a).

§ -72 Condominium education trust fund; payments by associations and developers. (a) Each project or association with more than five units shall pay to the department of commerce and consumer affairs a condominium education trust fund fee within one year after the recordation of the purchase of the first unit or within thirty days of the association's first meeting, and thereafter, on or before June 30 of every odd-numbered year, as prescribed by rules adopted pursuant to chapter 91.

(b) Each developer shall pay to the department of commerce and consumer affairs the condominium education trust fund fee for each unit in the project, as prescribed by rules adopted by the director of commerce and consumer affairs

pursuant to chapter 91. The project shall not be registered and no effective date for a developer's public report shall be issued until the payment has been made.

(c) Payments of any fees required under this section shall be due on or before the registration due date and shall be nonrefundable. Failure to pay the required fee by the due date shall result in a penalty assessment of ten per cent of the amount due and the association shall not have standing to bring any action to collect or to foreclose any lien for common expenses or other assessments in any court of this State until the amount due, including any penalty, is paid. Failure of an association to pay a fee required under this section shall not impair the validity of any claim of the association for common expenses or other assessments, or prevent the association from defending any action in any court of this State.

(d) The department of commerce and consumer affairs shall allocate the fees collected under this section to the condominium education trust fund established pursuant to section -71.

§ -73 Condominium education trust fund; management. (a) The sums received by the commission for deposit in the condominium education trust fund shall be held by the commission in trust for carrying out the purpose of the fund.

(b) The commission and the director of commerce and consumer affairs may use moneys in the condominium education trust fund to employ necessary personnel not subject to chapter 76 for additional staff support, to provide office space, and to purchase equipment, furniture, and supplies required by the commission to carry out its responsibilities under this part.

(c) The moneys in the condominium education trust fund may be invested and reinvested together with the real estate education fund established under section 467-19 in the same manner as are the funds of the employees' retirement system of the State. The interest and earnings from these investments shall be deposited to the credit of the condominium education trust fund.

(d) The commission shall annually submit to the legislature, no later than twenty days prior to the convening of each regular session:

- (1) A summary of the programs funded during the prior fiscal year and the amount of money in the fund; and
- (2) A copy of the budget for the current fiscal year, including summary information on programs that were funded or are to be funded."

SECTION 4. Act 164, Session Laws of Hawaii 2004, section 2, is amended by amending part V of chapter , Hawaii Revised Statutes, to read as follows:

**“PART V. PROTECTION OF CONDOMINIUM PURCHASERS  
[(RESERVED)]**

**A. GENERAL PROVISIONS**

§ -81 Applicability; exceptions. (a) This part applies to all units subject to this chapter, except as provided in subsection (b).

(b) No developer's public report shall be required in the case of:

- (1) A gratuitous disposition of a unit;
- (2) A disposition pursuant to court order;
- (3) A disposition by a government or governmental agency;
- (4) A disposition by foreclosure or deed in lieu of foreclosure; or
- (5) The sale of units in bulk, as defined in section -51(b); provided that the requirements of this part shall apply to any sale of units to the public following the sale of units in bulk.

§ -82 Sale of units. Except as provided in section -85, no sale or offer of sale of units in a project by a developer shall be made prior to the registration of the project by the developer with the commission, the issuance of an effective date for the developer's public report by the commission, and except as provided by law with respect to time share units, the delivery of the developer's public report to prospective purchasers. Notwithstanding any other provision to the contrary, where a time share project is duly registered under chapter 514E and a disclosure statement is effective and required to be delivered to the purchaser or prospective purchaser, the developer's public report need not be delivered to the purchaser or prospective purchaser.

§ -83 Developer's public report. (a) A developer's public report shall contain:

- (1) The name and address of the project, and the name, address, telephone number, and electronic mail address, if any, of the developer or the developer's agent;
- (2) A statement of the deadline, pursuant to section -89, for completion of construction or, in the case of a conversion, for the completion of any repairs required to comply with section -5, and the remedies available to the purchaser, including but not limited to cancellation of the sales contract, if the completion of construction or repairs does not occur on or before the completion deadline;
- (3) A breakdown of the annual maintenance fees and the monthly estimated cost for each unit, certified to have been based on generally accepted accounting principles, and a statement regarding when a purchaser shall become obligated to start paying the fees pursuant to section -41(b);
- (4) A description of all warranties for the individual units and the common elements, including the date of initiation and expiration of any such warranties, or a statement that no warranties exist;
- (5) A summary of the permitted uses of the units and, if applicable, the number of units planned to be devoted to a particular use;
- (6) A description of any development rights reserved to the developer or others;
- (7) A declaration, subject to the penalties set forth in section -69(b), that the project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to sections -5 and -32(a)(13); and
- (8) Any other facts, documents, or information that would have a material impact on the use or value of a unit or any appurtenant limited common elements or amenities of the project available for an owner's use, or that may be required by the commission.

(b) A developer shall promptly amend the developer's public report to report any pertinent or material change or both in the information required by this section.

§ -84 Developer's public report; special types of condominiums. (a) In addition to the information required by section -83, the developer's public report for a project containing any existing structures being converted to condominium status shall contain:

- (1) Regarding units that may be occupied for residential use and that have been in existence for five years or more:
  - (A) A statement by the developer, based upon a report prepared by a Hawaii-licensed architect or engineer, describing the present

condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the units;

(B) A statement by the developer of the expected useful life of each item reported on in subparagraph (A) or a statement that no representations are made in that regard; and

(C) A list of any outstanding notices of uncured violations of building code or other county regulations, together with the estimated cost of curing these violations;

(2) Regarding all projects containing converted structures, a verified statement signed by an appropriate county official that:

(A) The structures are in compliance with all zoning and building ordinances and codes applicable to the project at the time it was built, and specifying, if applicable:

(i) Any variances or other permits that have been granted to achieve compliance;

(ii) Whether the project contains any legal nonconforming uses or structures as a result of the adoption or amendment of any ordinances or codes; and

(iii) Any violations of current zoning or building ordinances or codes and the conditions required to bring the structure into compliance; or

(B) Based on the available information, the county official cannot make a determination with respect to the matters described in subparagraph (A); and

(3) Other disclosures and information that the commission may require.

(b) In addition to the information required by section -83, the developer's public report for a project in the agricultural district pursuant to chapter 205 shall disclose:

(1) Whether the structures and uses anticipated by the developer's promotional plan for the project are in compliance with all applicable state and county land use laws;

(2) Whether the structures and uses anticipated by the developer's promotional plan for the project are in compliance with all applicable county real property tax laws, and the penalties for noncompliance; and

(3) Other disclosures and information that the commission may require.

(c) In addition to the information required by section -83, the developer's public report for a project containing any assisted living facility units regulated or to be regulated pursuant to rules adopted under section 321-11(10) shall disclose:

(1) Any licensing requirements and the impact of the requirements on the costs, operations, management, and governance of the project;

(2) The nature and scope of services to be provided;

(3) Additional costs, directly attributable to the services, to be included in the association's common expenses;

(4) The duration of the provision of the services;

(5) Any other information the developer deems appropriate to describe the possible impacts on the project resulting from the provision of the services; and

(6) Other disclosures and information that the commission may require.

§ -85 Preregistration solicitation. (a) Prior to the registration of the project by the developer with the commission, the issuance of an effective date for the developer's public report by the commission, and the delivery of the developer's public report to prospective purchasers, and subject to the limitations set forth in subsection (b), the developer may solicit prospective purchasers and enter into

nonbinding preregistration agreements with the prospective purchasers with respect to units in the project. As used in this section, "solicit" means to advertise, to induce, or to attempt in whatever manner to encourage a person to acquire a unit.

(b) The solicitation activities authorized under subsection (a) shall be subject to the following limitations:

- (1) Prior to registration of the project with the commission and the issuance of an effective date for the developer's public report, the developer shall not collect any moneys from prospective purchasers or anyone on behalf of prospective purchasers, whether or not the moneys are to be placed in an escrow account, or whether or not the moneys would be refundable at the request of the prospective purchaser; and
- (2) The developer shall not require or request that a prospective purchaser execute any document other than a nonbinding preregistration agreement. The preregistration agreement may, but need not, specify the unit number of a unit in the project to be reserved and may, but need not, include a price for the unit. The preregistration agreement shall not incorporate the terms and provisions of the sales contract for the unit and, by its terms, shall not become a sales contract. Notwithstanding anything contained in the preregistration agreement to the contrary, the preregistration agreement may be canceled at any time by either the developer or the prospective purchaser by written notice to the other. The commission may prepare a form of preregistration agreement for use pursuant to this section, and use of the commission-prepared form shall be deemed to satisfy the requirements of the preregistration agreement as provided in this section.

**§ -86 Requirements for binding sales contracts; purchaser's right to cancel.** (a) No sales contract for the purchase of a unit from a developer shall be binding on the developer, prospective purchaser, or purchaser until:

- (1) The developer has delivered to the prospective purchaser:
  - (A) A true copy of the developer's public report including all amendments with an effective date issued by the commission. The developer's public report shall include the report itself, the condominium project's recorded declaration and bylaws, house rules if any, a letter-sized condominium project map, and all amendments. Where it is impractical to include a letter-sized condominium project map, the prospective purchaser or purchaser shall be provided a written notice of an opportunity to examine the map. The copy of the recorded declaration and bylaws creating the project shall indicate the document number or land court document number, or both, as applicable; and
  - (B) A notice of the prospective purchaser's thirty-day cancellation right on a form prescribed by the commission, upon which the prospective purchaser may indicate that the prospective purchaser has had an opportunity to read the developer's public report, understands the developer's public report, and exercises the right to cancel or waives the right to cancel; and
- (2) The prospective purchaser has waived the right to cancel or is deemed to have waived the right to cancel.

(b) Purchasers may cancel a sales contract at any time up to midnight of the thirtieth day after:

- (1) The date that the purchaser signs the contract; and
- (2) All of the items specified in subsection (a)(1) have been delivered to the purchaser.

(c) The prospective purchaser may waive the right to cancel, or shall be deemed to have waived the right to cancel, by:

- (1) Checking the waiver box on the cancellation notice and delivering it to the developer;
- (2) Letting the thirty-day cancellation period expire without taking any action to cancel; or
- (3) Closing the purchase of the unit before the cancellation period expires.

(d) The receipts, return receipts, or cancellation notices obtained under this section shall be kept on file in possession of the developer and shall be subject to inspection at any reasonable time by the commission or its staff or agents for a period of three years from the date the receipt or return receipt was obtained.

**§ -87 Rescission after sales contract becomes binding.** (a) Purchasers shall have a thirty-day right to rescind a binding sales contract for the purchase of a unit from a developer if there is a material change in the project. This rescission right shall not apply, however, in the event of any additions, deletions, modifications and reservations including, without limitation, the merger or addition or phasing of a project, made pursuant to the terms of the declaration.

(b) Upon delivery to a purchaser of a description of the material change on a form prescribed by the commission, the purchaser may waive the purchaser's rescission right provided in subsection (a) by:

- (1) Checking the waiver box on the option to rescind sales contract instrument, signing it, and delivering it to the seller;
- (2) Letting the thirty-day rescission period expire without taking any action to rescind; or
- (3) Closing the purchase of the unit before the thirty-day rescission period expires.

(c) In order to be valid, a rescission form must be signed by all purchasers of the affected unit, and postmarked no later than midnight of the thirtieth calendar day after the date that the purchasers received the rescission form from the seller. In the event of a valid exercise of a purchaser's right of rescission pursuant to this section, the purchasers shall be entitled to a prompt and full refund of any moneys paid.

(d) The rescission form obtained by the seller under this section shall be kept on file in possession of the seller and shall be subject to inspection at a reasonable time by the commission or its staff or agents, for a period of three years from the date the receipt or return receipt was obtained.

(e) This section shall not preclude a purchaser from exercising any rescission rights pursuant to a contract for the sale of a unit or any applicable common law remedies.

**§ -88 Delivery.** In this part, delivery shall be made by:

- (1) Personal delivery;
- (2) Registered or certified mail with adequate postage, to the recipient's address; provided that delivery shall be considered made three days after deposit in the mail or on any earlier date upon which the return receipt is signed;
- (3) Facsimile transmission, if the recipient has provided a fax number to the sender; provided that delivery shall be considered made upon the sender's receipt of automatic confirmation of transmission; or
- (4) Any other way prescribed by the commission.

**§ -89 Sales contracts before completion of construction.** If a sales contract for a unit is signed before the completion of construction or, in the case of a conversion, the completion of any repairs required to comply with section -5, the



sales contract shall contain an agreement of the developer that the completion of construction shall occur on or before the completion deadline, and the completion deadline shall be referenced in the developer's public report. The completion deadline may be a specific date, or the expiration of a period of time after the sales contract becomes binding, and may include a right of the developer to extend the completion deadline for force majeure as defined in the sales contract. The sales contract shall provide that the purchaser may cancel the sales contract at any time after the specified completion deadline, if completion of construction does not occur on or before the completion deadline, as the same may have been extended. The sales contract may provide additional remedies to the purchaser if the actual completion of construction does not occur on or before the completion deadline as set forth in the contract.

§ -90 Refunds upon cancellation or termination. Upon any cancellation under section -86 or -89, the purchaser shall be entitled to a prompt and full refund of all moneys paid, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of \$250.

§ -91 Escrow of deposits. All moneys paid by purchasers shall be deposited in trust under a written escrow agreement with an escrow depository licensed pursuant to chapter 449. An escrow depository shall not disburse purchaser deposits to or on behalf of the developer prior to closing except:

- (1) As provided in sections -92 and -93; or
- (2) As provided in the purchaser's sales contract in the event the sales contract is canceled. An escrow depository shall not disburse a purchaser's deposits at closing unless the escrow depository has received satisfactory assurances that all blanket mortgages and liens have been released from the purchaser's unit in accordance with section -45. Satisfactory assurances shall include a commitment by a title insurer licensed under chapter 431 to issue the purchaser a title insurance policy ensuring the purchaser that the unit has been conveyed free and clear of the liens.

§ -92 Use of purchaser deposits to pay project costs. (a) Subject to the conditions set forth in subsection (b), purchaser deposits that are held in escrow pursuant to a binding sales contract may be disbursed before closing to pay for project construction costs, including, in the case of a conversion, for repairs necessary to cure violations of county zoning and building ordinances and codes, for architectural, engineering, finance, and legal fees, and for other incidental expenses of the project.

(b) Disbursement of purchaser deposits prior to closing shall be permitted only if:

- (1) The commission has issued an effective date for the developer's public report for the project;
- (2) The developer has recorded the project's declaration and bylaws; and
- (3) The developer has submitted to the commission:
  - (A) A project budget showing all costs that are required to be paid in order to complete the project, including lease payments, real property taxes, construction costs, architectural, engineering and legal fees, and financing costs;
  - (B) Evidence satisfactory to the commission of the availability of sufficient funds to pay all costs required to be paid in order to complete the project, that may include purchaser funds, equity

funds, interim or permanent loan commitments, and other sources of funds; and

(C) If purchaser funds are to be disbursed prior to completion of construction of the project:

- (i) A copy of the executed construction contract;
- (ii) A copy of the building permit for the project; and
- (iii) Satisfactory evidence of security for the completion of construction, which evidence may include the following, in forms and content approved by the commission: a completion or performance bond issued by a surety licensed in the State in an amount equal to one hundred per cent of the cost of construction; a completion or performance bond issued by a material house in an amount equal to one hundred per cent of the cost of construction; an irrevocable letter of credit issued by a federally-insured financial institution in an amount equal to one hundred per cent of the cost of construction; or other substantially similar instrument or security approved by the commission. A completion or performance bond issued by a surety or by a material house, an irrevocable letter of credit, and any alternatives shall contain a provision that the commission shall be notified in writing before any payment is made to beneficiaries of the bond. Adequate disclosures shall be made in the developer's public report concerning the developer's use of a completion or performance bond issued by a material house instead of a surety, and the impact of any restrictions on the developer's use of purchaser's funds.

(c) A purchaser's deposits may be disbursed prior to closing only to pay costs set forth in the project budget submitted pursuant to subsection (b)(3)(A) that are approved for payment by the project lender or an otherwise qualified, financially disinterested person. In addition, purchaser deposits may be disbursed prior to closing to pay construction costs only in proportion to the valuation of the work completed by the contractor, as certified by a licensed architect or engineer.

(d) If purchaser deposits are to be disbursed prior to closing, the following notice shall be prominently displayed in the developer's public report for the project:

**"Important Notice Regarding Your Deposits: Deposits that you make under your sales contract for the purchase of the unit may be disbursed before closing of your purchase to pay for project costs, construction costs, project architectural, engineering, finance, and legal fees, and other incidental expenses of the project. While the developer has submitted satisfactory evidence that the project should be completed, it is possible that the project may not be completed. If your deposits are disbursed to pay project costs and the project is not completed, there is a risk that your deposits will not be refunded to you. You should carefully consider this risk in deciding whether to proceed with your purchase."**

**§ -93 Early conveyance to pay project costs.** (a) Subject to the conditions set forth in subsection (b), if units are conveyed or leased before the completion of construction of the building or buildings for the purpose of financing the construction, all moneys from the sale of the units, including any payments made on loan commitments from lending institutions, shall be deposited by the developer under an escrow arrangement into a federally-insured, interest-bearing account designated solely for that purpose, at a financial institution authorized to do business in the State. Disbursements from the escrow account may be made to pay for project construction costs, including, in the case of a conversion, for repairs necessary to

cure violations of county zoning and building ordinances and codes, for architectural, engineering, finance, and legal fees, and for other incidental expenses of the project.

(b) Conveyance or leasing of units before completion of construction shall be permitted only if:

- (1) The commission has issued an effective date for the developer's public report for the project;
- (2) The developer has recorded the project's declaration and bylaws; and
- (3) The developer has submitted to the commission:
  - (A) A project budget showing all costs required to be paid in order to complete the project, including real property taxes, construction costs, architectural, engineering and legal fees, and financing costs;
  - (B) Evidence satisfactory to the commission of the availability of sufficient funds to pay all costs required to be paid in order to complete the project, that may include purchaser funds, equity funds, interim or permanent loan commitments, and other sources of funds;
  - (C) A copy of the executed construction contract;
  - (D) A copy of the building permit for the project; and
  - (E) Satisfactory evidence of security for the completion of construction, that may include the following, in forms and content approved by the commission: a completion or performance bond issued by a surety licensed in the State in an amount equal to one hundred per cent of the cost of construction; a completion or performance bond issued by a material house in an amount equal to one hundred per cent of the cost of construction; an irrevocable letter of credit issued by a federally-insured financial institution in an amount equal to one hundred per cent of the cost of construction; or other substantially similar instrument or security approved by the commission. A completion or performance bond issued by a surety or by a material house, an irrevocable letter of credit, and any alternatives shall contain a provision that the commission shall be notified in writing before any payment is made to beneficiaries of the bond. Adequate disclosures shall be made in the developer's public report concerning the developer's use of a completion or performance bond issued by a material house instead of a surety, and the impact of any restrictions on the developer's use of purchaser's funds.

(c) Moneys from the conveyance or leasing of units before completion of construction may be disbursed only to pay costs set forth in the project budget submitted pursuant to subsection (b)(3)(A) that are approved for payment by the project lender or an otherwise qualified, financially disinterested person. In addition, such moneys may be disbursed to pay construction costs only in proportion to the valuation of the work completed by the contractor, as certified by a licensed architect or engineer. The balance of any purchase price may be disbursed to the developer only upon completion of construction of the project and the satisfaction of any mechanic's and materialman's liens.

(d) If moneys from the conveyance or leasing of units before completion of construction are to be disbursed to pay for project costs, the following notice shall be prominently displayed in the developer's public report for the project:

**"Important Notice Regarding Your Funds: Payments that you make under your sales contract for the purchase of the unit may be disbursed upon closing of your purchase to pay for project costs, including construction costs, project**

architectural, engineering, finance, and legal fees, and other incidental expenses of the project. While the developer has submitted satisfactory evidence that the project should be completed, it is possible that the project may not be completed. If your payments are disbursed to pay project costs and the project is not completed, there is a risk that your payments will not be refunded to you. You should carefully consider this risk in deciding whether to proceed with your purchase."

§ -94 Misleading statements and omissions; remedies. (a) No person may:

- (1) Knowingly authorize, direct, or aid in the publication, advertisement, distribution, or circulation of any false statement or representation concerning any project offered for sale or lease; or
- (2) Issue, circulate, publish, or distribute any advertisement, pamphlet, prospectus, or letter concerning a project that contains any false written statement or is misleading due to the omission of a material fact.

(b) Every sale made in violation of this section shall be voidable at the election of the purchaser; and the person making the sale and every director, officer, or agent of or for the seller, if the director, officer, or agent has personally participated or aided in any way in making the sale, shall be jointly and severally liable to the purchaser in an action in any court of competent jurisdiction upon tender of the units sold or of the contract made, for the full amount paid by the purchaser, with interest, together with all taxable court costs and reasonable attorneys' fees; provided that no action shall be brought for the recovery of the purchase price after two years from the date of the sale; and provided further that no purchaser otherwise entitled shall claim or have the benefit of this section who has refused or failed to accept within thirty days an offer in writing of the seller to take back the unit in question and to refund the full amount paid by the purchaser, together with interest at six per cent on the amount for the period from the date of payment by the purchaser down to the date of repayment.

## **B. SALES TO OWNER-OCCUPANTS**

§ -95.1 Definitions. As used in this subpart:

"Chronological system" means a system in which the residential units designated for sale to prospective owner-occupants are offered for sale to prospective owner-occupants in the chronological order in which the prospective owner-occupants deliver to the developer or the designated real estate broker completed owner-occupant affidavits, executed sales contracts or reservations, and earnest money deposits.

"Initial date of sale" means the date of the first publication of the announcement or advertisement pursuant to section -95.2.

"Lottery system" means a system in which no prospective owner-occupant has an unfair advantage in the determination of the order in which residential units designated for sale to prospective owner-occupants are offered for sale because the order is determined by a lottery.

"Owner-occupant" means any individual in whose name sole or joint legal title is held in a residential unit that, simultaneous to such ownership, serves as the individual's principal residence, as defined by the department of taxation, for a period of not less than three hundred sixty-five consecutive days; provided that the individual shall retain complete possessory control of the premises of the residential unit during this period. An individual shall not be deemed to have complete possessory control of the premises if the individual rents, leases, or assigns the premises for any period of time to any other person in whose name legal title is not held; except that an individual shall be deemed to have complete possessory control

even when the individual conveys or transfers the unit into a trust for estate planning purposes and continues in the use of the premises as the individual's principal residence during this period.

"Residential unit" means "unit" as defined in section -3, but excludes:

- (1) Any unit intended for commercial use;
- (2) Any unit designed and constructed for hotel or resort use that is located on any parcel of real property designated and governed by a county for hotel or resort use pursuant to section 46-4; and
- (3) Any other use pursuant to authority granted by law to a county.

"Thirty-day period" or "thirty days" means thirty full consecutive calendar days, including up to midnight on the thirtieth day.

**§ -95.2 Announcement or advertisement; publication.** At least once in each of two successive weeks, and at any time following the issuance of an effective date of the first developer's public report for the condominium project, the developer shall cause to be published in at least one newspaper published daily in the State with a general circulation in the county in which the project is to be located, and, if the project is located other than on the island of Oahu, in at least one newspaper that is published at least weekly in the county in which the project is to be located, an announcement or advertisement containing at least the following information:

- (1) The location of the project;
- (2) The minimum price of the residential units;
- (3) A designation as to whether the residential units are to be sold in fee simple or leasehold;
- (4) A statement that for a thirty-day period following the initial date of sale of the condominium project, at least fifty per cent of the residential units being marketed shall be offered only to prospective owner-occupants;
- (5) The name, telephone number, and address of the developer or other real estate broker designated by the developer that an interested individual may contact to secure an owner-occupant affidavit, developer's public report, and any other information concerning the project; and
- (6) If applicable, a statement that the residential units will be offered to prospective purchasers through a public lottery.

**§ -95.3 Designation of residential units.** (a) The developer of any project containing residential units shall designate at least fifty per cent of the units for sale to prospective owner-occupants pursuant to section -95.7. The designation shall be set forth either in the developer's public report or in the announcement or advertisement required by section -95.2, and may be set forth in both. The units shall constitute a proportionate representation of all the residential units in the project with regard to factors of square footage, number of bedrooms and bathrooms, floor level, and whether or not the unit has a lanai.

(b) A developer shall have the right to substitute a unit designated for owner-occupants with a unit that is not so designated; provided that the units shall be similar with regard to the factors enumerated in subsection (a). The substitution shall not require the developer's submission of a supplementary developer's public report.

**§ -95.4 Unit selection; requirements.** (a) When the chronological system is used, the developer or the developer's real estate broker, as the case may be, shall offer the residential units that have been designated pursuant to section -95.3 as follows:

- (1) For thirty days from the date of the first published announcement or advertisement required under section -95.2, the developer or devel-

oper's real estate broker shall offer the residential units that have been designated pursuant to section -95.3 to prospective purchasers chronologically in the order in which they submit to the developer or the developer's real estate broker, a completed owner-occupant affidavit, an executed sales contract or reservation, and an earnest money deposit in a reasonable amount designated by the developer. The developer or the developer's real estate broker shall maintain at all times a sufficient number of sales contracts and affidavits for prospective owner-occupants to execute and shall make them first available to prospective owner-occupants on the day immediately following the date of the first publication of the announcement or advertisement for the duration of the time period as specified in this paragraph. Prospective purchasers who do not have the opportunity to select a residential unit during the thirty-day period shall be placed on a back-up reservation list in the order in which they submit a completed owner-occupant affidavit and earnest money deposit in a reasonable amount designated by the developer;

- (2) If two or more prospective owner-occupants intend to reside jointly in the same residential unit, only one residential unit designated pursuant to section -95.3 shall be offered to them, or only one of them shall be placed on the back-up reservation list;
- (3) No developer, employee or agent of the developer, or any real estate licensee, either directly or through any other person, shall release any information or inform any prospective owner-occupant about the publication announcement or advertisement referred to in section -95.2, including the date it is to appear and when the chronological system will be initiated, until after the announcement or advertisement is published; provided that a developer, as part of any preregistration solicitation permitted under section -85, may disclose whether units will be offered to owner-occupants pursuant to this subpart and whether a chronological or lottery system will be used; and
- (4) The developer shall compile and maintain a list of all prospective purchasers that submit a completed owner-occupant affidavit, an executed sales contract or reservation, and an earnest money deposit, and maintain a back-up reservation list, if any. Upon the request of the commission, the developer shall provide a copy of the list of all prospective purchasers and the back-up reservation list.

(b) When the public lottery system is used, the developer or the developer's broker, as the case may be, shall offer the residential units that have been designated pursuant to section -95.3 as follows:

- (1) From the date of the first published announcement or advertisement required under section -95.2 until five calendar days after the last published announcement or advertisement, the developer or developer's real estate broker shall compile and maintain a list of all prospective owner-occupants who have submitted to the developer or the developer's real estate broker a duly executed owner-occupant affidavit. All prospective owner-occupants on this list shall be included in the public lottery described in paragraph (2). The developer and the developer's real estate broker shall maintain at all times sufficient copies of affidavits for prospective owner-occupants to execute and shall make them first available to prospective owner-occupants on the day immediately following the date of the first publication of the announcement or advertisement for the duration of the time period as specified in this subsection. Upon the request of the commission, the

developer shall provide a copy of the lottery list of prospective owner-occupants;

- (2) The developer or developer's real estate broker shall conduct a public lottery on the date, time, and location as set forth in the published announcement, or advertisement. The lottery shall be held no later than the thirtieth day following the date of the first published announcement or advertisement. Any person, including all prospective owner-occupants eligible for the lottery, shall be allowed to attend the lottery;
- (3) The public lottery shall be conducted so that no prospective owner-occupant shall have an unfair advantage and, as to all owner-occupants whose affidavits were submitted to the developer or the developer's real estate broker within the time period specified in paragraph (1), shall be conducted without regard to the order in which the affidavits were submitted. If two or more prospective owner-occupants intend to reside jointly in the same residential unit, only one of them shall be entitled to enter the public lottery; and
- (4) After the public lottery, each prospective owner-occupant purchaser, in the order in which they are selected in the lottery, shall be given the opportunity to select one of the residential units that have been designated pursuant to section -95.3, execute a sales contract, and submit an earnest money deposit in a reasonable amount designated by the developer. The developer shall maintain a list, in the order of selection, of all prospective purchasers selected in the lottery, and maintain a list of all prospective purchasers who selected one of the residential units designated pursuant to section -95.3. Prospective purchasers selected in the lottery who did not have the opportunity to select one of the residential units designated pursuant to section -95.3, but who submitted an earnest money deposit in a reasonable amount designated by the developer, shall be placed on a back-up reservation list in the order in which they were selected in the public lottery. Upon request of the commission, copies of the lists shall be submitted.

§ -95.5 Affidavit. (a) The owner-occupant affidavit required by section -95.4 shall expire after three hundred sixty-five consecutive days have elapsed after the recordation of the instrument conveying the unit to the affiant. The affidavit shall expire prior to this period upon acquisition of title to the property by an institutional lender or investor through mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure.

(b) The affidavit shall include statements by the affiant affirming that the affiant shall notify the commission immediately upon any decision to cease being an owner-occupant.

(c) The affidavit shall be personally executed by all the prospective owner-occupants of the residential unit and shall not be executed by an attorney-in-fact.

§ -95.6 Prohibitions. (a) No person who has executed an owner-occupant affidavit shall sell or offer to sell, lease or offer to lease, rent or offer to rent, assign or offer to assign, or convey the unit until at least three hundred sixty-five consecutive days have elapsed since the recordation of the purchase; provided that a person who continues in the use of the premises as the individual's principal residence during this period may convey or transfer the unit into a trust for estate planning purposes. Any contract or instrument entered into in violation of this subpart shall be subject to the remedies provided in section -95.9(a).

(b) No developer, employee or agent of a developer, or real estate licensee shall violate or aid any other person in violating this subpart.

§ -95.7 Sale of residential units; developer requirements. (a) The developer may go to sale using either a chronological system or a lottery system at any time after issuance of an effective date for a developer's public report for which the effective date has not expired.

(b) For a thirty-day period following the initial date of sale of units in a condominium project, at least fifty per cent of the units being sold shall be offered for sale only to prospective owner-occupants; provided that notwithstanding this subpart, in the case of a project that includes one or more existing structures being converted to condominium status, each residential unit contained in the project first shall be offered for sale to any individual occupying the unit immediately prior to the conversion and who submits an owner-occupant affidavit and an earnest money deposit in a reasonable amount designated by the developer.

(c) Each contract for the purchase of a residential unit by an owner-occupant may be conditioned upon the purchaser obtaining adequate financing, or a commitment for adequate financing. If the sales contract is canceled, the developer shall re-offer the residential unit first to prospective owner-occupants on the back-up reservation list described in section -95.4, in the order in which the names appear on the reservation list; provided that the prospective owner-occupant shall not have already executed a sales contract or reservation for a residential unit in the project.

(d) At any time, any prospective owner-occupant on the back-up reservation list may be offered any residential unit in the project that has not been sold or set aside for sale to prospective owner-occupants.

§ -95.8 Enforcement. (a) Whenever the commission finds based upon satisfactory evidence that any person is violating or has violated any provision of this subpart or rules of the commission adopted pursuant thereto, the commission may conduct an investigation on the matter and bring an action in the name of the commission in any court of competent jurisdiction against the person to enjoin the person from continuing the violation or doing any acts in furtherance thereof.

(b) Before the commission brings an action in any court of competent jurisdiction pursuant to subsection (a) against any person who executed an affidavit pursuant to this subpart, it may consider whether the following extenuating circumstances affected the person's ability to comply with the law:

- (1) Serious illness of any of the owner-occupants who executed the affidavit or of any other person who was to or has occupied the residential unit;
- (2) Unforeseeable job or military transfer;
- (3) Unforeseeable change in marital status, or change in parental status; or
- (4) Any other unforeseeable occurrence subsequent to execution of the affidavit.

If the commission finds that extenuating circumstances exist, the commission may cease any further action and order release of any net proceeds held in abeyance.

(c) Any individual who executes an affidavit pursuant to this subpart and who subsequently sells or offers to sell, leases or offers to lease, rents or offers to rent, assigns or offers to assign, or otherwise transfers any interest in the residential unit that the person obtained pursuant to this subpart, shall have the burden of proving the person's compliance with the requirements of this part.

(d) Upon request, the commission may require verification that a presumed owner-occupant continues to be an "owner-occupant", as defined in this subpart. If, due to a sale, lease, assignment, or transfer of the residential unit, the presumed owner-occupant is unable to verify continuing owner-occupancy status, that person may be subject to a fine in an amount equal to the profit made from the sale, lease, assignment, or transfer.



(e) The commission shall adopt rules, pursuant to chapter 91, to carry out the purposes of this subpart.

§ -95.9 Penalties. (a) Any person who executes an affidavit required by this subpart and who violates or fails to comply with any of the provisions of this subpart or any rule adopted by the commission pursuant thereto, shall be subject to a civil penalty of up to \$10,000; or fifty per cent of the net proceeds received or to be received by the person from the sale, lease, rental, assignment, or other transfer of the residential unit to which the violation relates, whichever is the greater amount.

(b) Any developer, employee or agent of a developer, or real estate licensee who violates or fails to comply with any of the provisions of this subpart or any rule adopted by the commission pursuant thereto, shall be subject to a civil penalty of up to \$10,000. Each violation shall constitute a separate offense.

§ -95.10 False statement. It shall be unlawful for any person to make a false statement in the affidavit required by this subpart or for any person to file with the commission any notice, statement, or other document required under this subpart or any rule adopted by the commission pursuant thereto which is false or contains a material misstatement or omission of fact. Any violation of this section shall be a misdemeanor punishable by a fine not to exceed \$2,000, or by imprisonment for a term not to exceed one year, or both.

§ -95.11 Inapplicability of laws. (a) This subpart shall not apply to:

- (1) A project developed pursuant to section 46-15 or 46-15.1, or chapter 53, 201G, or 206; provided that the developer of the project may elect to be subject to this subpart through a written notification to the commission;
- (2) Condominium projects where the developer conveys all of the residential units in the project to a spouse, or family members related by blood, descent or adoption; and
- (3) Condominium projects consisting of two or fewer units.

(b) A developer of a project specified in subsection (a)(1) who elects to be subject to this subpart, or of a project developed pursuant to an affordable housing requirement established by a state or county governmental agency, may elect to waive specific provisions of this subpart that conflict with the eligibility or preference requirements imposed by the governmental agency. The developer of a project specified in subsection (a)(1) who exercises the election shall provide detailed written notification to the commission of the specific provisions that will be waived, an explanation for each waived provision, and a statement from the affected governmental agency that the project is either an inapplicable project pursuant to subsection (a)(1) or a project for which a governmental agency has imposed eligibility or preference requirements. A copy of this notification shall be filed with the affected governmental agency.

(c) A filing to meet the notification requirements of subsection (a)(1) or (b) shall not be construed to be an approval or disapproval of the project by the commission.”

SECTION 5. Act 164, Session Laws of Hawaii 2004, section 2, is amended by amending section -149, Hawaii Revised Statutes, to read as follows:

**“§ -149 Association fiscal matters; handling and disbursement of funds.** (a) The funds in the general operating account of the association shall not be commingled with funds of other activities such as lease rent collections [~~and rental operations~~], rental, time share, and assisted living facility operations, nor shall a

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managing agent commingle any association funds with the managing agent's own funds.

(b) For purposes of subsection (a), lease rent collections and rental operations shall not include the rental or leasing of common elements that is conducted on behalf of the association or the collection of ground lease rents from individual unit owners of a project and the payment of such ground lease rents to the ground lessor if:

- (1) The collection is allowed by the provisions of the declaration, bylaws, master deed, master lease, or individual unit leases of the project;
- (2) A management contract requires the managing agent to collect ground lease rents from the individual unit owners and pay the ground lease rents to the ground lessor;
- (3) The system of lease rent collection has been approved by a majority vote of all unit owners at a meeting of the association; and
- (4) The managing agent or association does not pay ground lease rent to the ground lessor in excess of actual ground lease rent collected from individual unit owners.

(c) All funds collected by an association, or by a managing agent for any association, shall be:

- (1) Deposited in a financial institution, including a federal or community credit union, located in the State, pursuant to a resolution adopted by the board, and whose deposits are insured by an agency of the United States government;
- (2) Held by a corporation authorized to do business under article 8 of chapter 412;
- (3) Held by the United States Treasury; or
- (4) Purchased in the name of and held for the benefit of the association through a securities broker that is registered with the Securities and Exchange Commission, that has an office in the State, and the accounts of which are held by member firms of the New York Stock Exchange or National Association of Securities Dealers and insured by the Securities Insurance Protection Corporation[; ~~provided that deposits and certificates of deposit shall not be purchased through a securities broker~~].

~~[(4)]~~ All funds collected by an association, or by a managing agent for any association, shall be invested only in:

- (1) Deposits, investment certificates, savings accounts, and certificates of deposit~~[of an institution as defined in subsection (c)(1)]~~;
- (2) Obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten years after the purchase date unless approved otherwise by a majority vote of the unit owners at an annual or special meeting of the association or by written consent of a majority of the unit owners; or
- (3) Mutual funds comprised solely of investments in the obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten years after the purchase date unless approved otherwise by a majority vote of the unit owners at an annual or special meeting of the association or by written consent of a majority of the unit owners;

provided that before any investment longer than one year is made by an association, the board must approve the action; and provided further that the board must clearly disclose to owners all investments longer than one year at each year's association annual meeting.

Records of the deposits and disbursements shall be disclosed to the commission upon request. All funds collected by an association shall only be disbursed by employees of the association under the supervision of the association's board. All funds collected by a managing agent from an association shall be held in a client trust fund account and shall be disbursed only by the managing agent or the managing agent's employees under the supervision of the association's board.

~~[(e)]~~ (d) A managing agent or board shall not, by oral instructions over the telephone, transfer association funds between accounts, including but not limited to the general operating account and reserve fund account.

~~[(f)]~~ (e) A managing agent shall keep and disburse funds collected on behalf of the condominium owners in strict compliance with any agreement made with the condominium owners, chapter 467, the rules of the commission, and all other applicable laws.

~~[(g)]~~ (f) Any person who embezzles or knowingly misapplies association funds received by a managing agent or association shall be guilty of a class C felony.”

SECTION 6. Chapter 514A, Hawaii Revised Statutes, is repealed.

SECTION 7. Act 164, Session Laws of Hawaii 2004, is amended by amending section 35 to read as follows:

“SECTION 35. This Act shall take effect on ~~[July 1, 2005;]~~ July 1, 2006; provided that:

- (1) ~~[Section —146]~~ The text of section ~~—146~~ in part I of this Act shall be repealed on December 31, 2007, and reenacted in the form in which it read, as section 514A-90, Hawaii Revised Statutes, on the day before the approval of Act 39, Session Laws of Hawaii 2000, but with the amendments to section 514A-90, Hawaii Revised Statutes, made by Act 53, Session Laws of Hawaii 2003;
- ~~[(2)]~~ Section ~~—161~~ in part I of this Act, relating to mediation shall take effect on ~~July 1, 2006;~~
- ~~[(3)]~~ (2) Section 28 of this Act shall take effect on July 1, 2004, and shall be repealed on June 30, 2006;
- ~~[(4)]~~ (3) Sections 30 to 33 of this Act shall take effect on July 1, 2004; and
- ~~[(5)]~~ (4) If provisions regarding the creation, alteration, termination, registration, and administration of condominiums, and the protection of condominium purchasers, are not adopted effective ~~[July 1, 2005;]~~ July 1, 2006, parts I and II of this Act shall be repealed on ~~[June 30, 2005;]~~ June 30, 2006.”

SECTION 8. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 9. (a) Nothing contained in the new chapter of the Hawaii Revised Statutes established by section 2 of Act 164, Session Laws of Hawaii 2004, as amended by this Act, shall affect the rights and obligations established under any sales contract between a developer and a purchaser of an apartment in a condominium project that was registered by the developer pursuant to part III of chapter 514A, Hawaii Revised Statutes, prior to the effective date of the new chapter. The rights and obligations of these developers and purchasers shall continue to be governed by chapter 514A, Hawaii Revised Statutes.

## ACT 94

(b) The developer of a project registered pursuant to chapter 514A, Hawaii Revised Statutes, may elect to register the project under the new chapter established by section 2 of Act 164, Session Laws of Hawaii 2004, as amended by this Act, by submitting the application, documentation, and fees required under sections -52 and -54, Hawaii Revised Statutes, in section 3 of this Act. Upon the issuance of an effective date for the project's public report pursuant to the new chapter, the project's registration under chapter 514A, Hawaii Revised Statutes, shall terminate, the developer shall provide copies of the new public report to all existing purchasers, and the rights and obligations of the developer and all purchasers shall thereafter be governed by the new chapter; provided that unless the new public report reflects a material change to the project:

- (1) The issuance of the new public report shall not affect the enforceability of any purchase contract that previously became binding upon the purchaser;
- (2) A purchaser shall have no right to rescind the purchase contract; and
- (3) A developer shall not be required to deliver a notice of thirty-day right of cancellation as specified in section -86, Hawaii Revised Statutes, in section 4 of this Act.

SECTION 10. Section 16-53-16.8, Hawaii Administrative Rules, shall remain in effect until the director of commerce and consumer affairs adopts rules establishing fees pursuant to section 26-9(1), Hawaii Revised Statutes, and the new chapter established pursuant to section 2 of Act 164, Session Laws of Hawaii 2004, as amended by this Act.

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 12. This Act shall take effect on July 1, 2005; provided that:

- (1) Section 7 shall take effect on June 30, 2005; and
- (2) Sections 6, 8, 9, and 10 shall take effect on July 1, 2006.

(Approved June 2, 2005.)

## ACT 94

S.B. NO. 944

A Bill for an Act Making an Appropriation for Collective Bargaining Cost Items.

*Be It Enacted by the Legislature of the State of Hawaii:*

### PART I

SECTION 1. There are appropriated or authorized from the sources of funding indicated below to program planning, analysis, and budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for the 2005-2007 fiscal biennium all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of collective bargaining units (1) and (10):

|               | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|---------------|---------------------|---------------------|
| General funds | \$7,547,890         | \$18,985,532        |
| Special funds | \$1,370,699         | \$ 3,391,809        |
| Federal funds | \$ 391,426          | \$ 975,262          |
| Other funds   | \$ 72,326           | \$ 179,232          |

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments for expenditure in the respective fiscal year for the purposes of this part.

PART II

SECTION 3. There are appropriated or authorized from the sources of funding indicated below to program planning, analysis, and budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for the 2005-2007 fiscal biennium the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining who belong to the same compensation plans as those officers and employees within collective bargaining units (1) and (10):

|               | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|---------------|---------------------|---------------------|
| General funds | \$116,732           | \$296,179           |
| Special funds | \$ 21,708           | \$ 53,693           |
| Federal funds | \$ 9,087            | \$ 22,488           |
| Other funds   | \$ 11,853           | \$ 29,361           |

SECTION 4. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments for expenditure in the respective fiscal year for the purposes of this part.

PART III

SECTION 5. There are appropriated or authorized from the sources of funding indicated below to administration (JUD 601) the following sums, or so much thereof as may be necessary, to fund for the 2005-2007 fiscal biennium all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of collective bargaining units (1) and (10):

|               | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|---------------|---------------------|---------------------|
| General funds | \$125,892           | \$299,047           |

SECTION 6. Funds appropriated or authorized by this part shall be allotted by the chief justice for expenditure in the respective fiscal year for the purposes of this part.

PART IV

SECTION 7. There are appropriated or authorized from the sources of funding indicated below to administration (JUD 601) the following sums, or so much thereof as may be necessary, to fund for the 2005-2007 fiscal biennium the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, by the chief justice for state officers and employees excluded from collective bargaining who belong to the same compensation plans as those officers and employees within collective bargaining units (1) and (10):

**ACT 94**

|               | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|---------------|---------------------|---------------------|
| General funds | \$954               | \$1,813             |

SECTION 8. Funds appropriated or authorized by this part shall be allotted by the chief justice for expenditure in the respective fiscal year for the purposes of this part.

**PART V**

SECTION 9. There are appropriated or authorized from the source of funding indicated below to hospital care – Hawaii health systems corporation (HTH 210) the following sums, or so much thereof as may be necessary, to fund for the 2005-2007 fiscal biennium all collective bargaining cost items in the agreement negotiated for state employees in collective bargaining units (1) and (10) assigned to the Hawaii health systems corporation:

|               | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|---------------|---------------------|---------------------|
| General funds | \$1,494,510         | \$3,740,097         |

SECTION 10. Funds appropriated or authorized by this part shall be allotted by the director of finance to the Hawaii health systems corporation for expenditure in the respective fiscal year for the purposes of this part.

**PART IV<sup>1</sup>**

SECTION 11. There are appropriated or authorized from the source of funding indicated below to hospital care – Hawaii health systems corporation (HTH 210) the following sums, or so much thereof as may be necessary, to fund for the 2005-2007 fiscal biennium the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees assigned to the Hawaii health systems corporation who are excluded from collective bargaining who belong to the same compensation plans as those officers and employees within collective bargaining units (1) and (10):

|               | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|---------------|---------------------|---------------------|
| General funds | \$76,666            | \$189,648           |

SECTION 12. Funds appropriated or authorized by this part shall be allotted by the director of finance to the Hawaii health systems corporation for expenditure in the respective fiscal year for the purposes of this part.

**PART V<sup>1</sup>**

SECTION 13. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 14. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2006, and June 30, 2007, of the respective fiscal year, shall lapse as of those dates.

SECTION 15. This Act shall take effect on July 1, 2005.

(Approved June 3, 2005.)

**Note**

1. So in original.

ACT 95

S.B. NO. 1579

A Bill for an Act Making Appropriations for Collective Bargaining Cost Items.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to provide funds pursuant to section 89-11(g), Hawaii Revised Statutes, due to an impasse in negotiations on issues involving the employer-union health benefits trust fund.

PART I

SECTION 2. There are appropriated or authorized from the source of funding indicated below to program planning, analysis and budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for the fiscal biennium 2005-2007 the Hawaii employer-union health benefits trust fund costs contained in the agreement negotiated with the exclusive bargaining representative of collective bargaining units (1) and (10):

|               | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|---------------|---------------------|---------------------|
| General funds | \$2,066,084         | \$4,587,287         |

SECTION 3. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments for expenditure in the respective fiscal year for the purposes of this part.

PART II

SECTION 4. There are appropriated or authorized from the source of funding indicated below to program planning, analysis and budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2005-2007 the Hawaii employer-union health benefits trust fund costs authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining who belong to the same compensation plans as those officers and employees within collective bargaining units (1) and (10):

|               | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|---------------|---------------------|---------------------|
| General funds | \$4,953             | \$11,015            |

SECTION 5. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments for expenditure in the respective fiscal year for the purposes of this part.

PART III

SECTION 6. Cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 7. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2006, and June 30, 2007, of the respective fiscal years, shall lapse as of those dates.

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SECTION 8. This Act shall take effect on July 1, 2005.

(Approved June 3, 2005.)

**ACT 96**

H.B. NO. 260

A Bill for an Act Making Appropriations for Collective Bargaining Cost Items.

*Be It Enacted by the Legislature of the State of Hawaii:*

**PART I**

SECTION 1. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis and Budgeting (BUF 101) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2005-2007, all collective bargaining salary increases and other cost adjustments in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit (11):

|               | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|---------------|---------------------|---------------------|
| General funds | \$ 53,114           | \$ 147,730          |
| Special funds | \$412,547           | \$1,147,516         |

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments for expenditure in the respective fiscal year for the purposes of this part.

**PART II**

SECTION 3. There are appropriated or authorized from the sources of funding indicated below to Program Planning, analysis and Budgeting (BUF 101) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2005-2007, the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees in the executive branch who are excluded from collective bargaining:

|               | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|---------------|---------------------|---------------------|
| General funds | \$ 4,793            | \$11,613            |
| Special funds | \$34,564            | \$83,831            |

SECTION 4. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments for expenditure in the respective fiscal year for the purposes of this part.

**PART III**

SECTION 5. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis and Budgeting (BUF 101) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2005-2007, the Hawaii employer-union health benefits trust fund costs in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit (11):



|               | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|---------------|---------------------|---------------------|
| General funds | \$47,138            | \$104,965           |

SECTION 6. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments for expenditure in the respective fiscal year for the purposes of this part.

PART IV

SECTION 7. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis and Budgeting (BUF 101) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2005-2007, the Hawaii employer-union health benefits trust fund costs authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees in the executive branch who are excluded from collective bargaining and who belong to the same compensation plans as those officers and employees within collective bargaining unit (11):

|               | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|---------------|---------------------|---------------------|
| General funds | \$1,342             | \$3,003             |

SECTION 8. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments for expenditure in the respective fiscal year for the purposes of this part.

PART V

SECTION 9. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 10. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2006, and June 30, 2007, of the respective fiscal years, shall lapse as of those dates.

SECTION 11. This Act shall take effect on July 1, 2005.

(Approved June 3, 2005.)

**ACT 97**

H.B. NO. 1597

A Bill for an Act Making Appropriations for Collective Bargaining Cost Items.

*Be It Enacted by the Legislature of the State of Hawaii:*

PART I

SECTION 1. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis and Budgeting (BUF 101) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2005-2007, all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of bargaining unit (9):

|               | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|---------------|---------------------|---------------------|
| General funds | \$1,431,849         | \$4,650,671         |
| Special funds | \$ 2,790            | \$ 9,079            |
| Federal funds | \$ 116,024          | \$ 360,244          |
| Other funds   | \$ 17,061           | \$ 55,019           |

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments in the respective fiscal year for the purposes of this part.

PART II

SECTION 3. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis and Budgeting (BUF 101) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2005-2007 the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining:

|               | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|---------------|---------------------|---------------------|
| General funds | \$13,980            | \$35,796            |
| Special funds | \$ 2,178            | \$ 4,796            |
| Federal funds | \$ 3,848            | \$12,232            |

SECTION 4. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments in the respective fiscal year for the purposes of this part.

PART III

SECTION 5. There are appropriated or authorized from the sources of funding indicated below to Administrative Director Services (JUD 201) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2005-2007, all collective bargaining cost items in the agreement negotiated with the exclusive bargaining unit representative of bargaining unit (9):

|               | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|---------------|---------------------|---------------------|
| General funds | \$2,129             | \$6,948             |

SECTION 6. Funds appropriated or authorized by this part shall be allotted by the chief justice in the respective fiscal year for the purposes of this part.

PART IV

SECTION 7. There are appropriated or authorized from the sources of funding indicated below to Administrative Director Services (JUD 201) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2005-2007 the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, by the chief justice for state officers and employees excluded from collective bargaining:

|               | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|---------------|---------------------|---------------------|
| General funds | \$2,725             | \$8,220             |

SECTION 8. Funds appropriated or authorized by this part shall be allotted by the chief justice in the respective fiscal year for the purposes of this part.

PART V

SECTION 9. There are appropriated or authorized from the sources of funding indicated below to hospital care – Hawaii Health Systems Corporation (HTH 210) the following sums or so much thereof as may be necessary to fund for fiscal year<sup>1</sup> 2005-2007 all collective bargaining cost items in the agreements with the exclusive bargaining representative of collective bargaining unit (9) assigned to the Hawaii Health Systems Corporation:

|               | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|---------------|---------------------|---------------------|
| General funds | \$2,013,272         | \$6,708,015         |

SECTION 10. Funds appropriated or authorized by this part shall be allotted by the director of finance to the Hawaii Health Systems Corporation for the purposes of this part.

PART VI

SECTION 11. There are appropriated or authorized from the source of funding indicated below to hospital care – Hawaii Health Systems Corporation (HTH 210) the following sums or so much thereof as may be necessary to fund for fiscal year<sup>1</sup> 2005-2007 the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers or employees assigned to the Hawaii Health Systems Corporation who are excluded from collective bargaining:

|               | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|---------------|---------------------|---------------------|
| General funds | \$33,138            | \$79,412            |

SECTION 12. Funds appropriated or authorized by this part shall be allotted by the director of finance to the Hawaii Health Systems Corporation for the purposes of this part.

PART VII

SECTION 13. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 14. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2006, and June 30, 2007, of the respective fiscal years, shall lapse as of those dates.

SECTION 15. This Act shall take effect on July 1, 2005.

(Approved June 3, 2005.)

**Note**

1. So in original.

A Bill for an Act Making Appropriations for Salary Increases for Public Employees.  
*Be It Enacted by the Legislature of the State of Hawaii:*

PART I

SECTION 1. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis and Budgeting (BUF 101) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2005-2007 all collective bargaining cost items in the agreements negotiated with the exclusive bargaining representatives of collective bargaining units (2), (3), (4), (6), (8), and (13):

| <u>Fund</u> | <u>FY 2005-06</u> | <u>FY 2006-07</u> |
|-------------|-------------------|-------------------|
| General     | \$22,018,121      | \$55,322,914      |
| Special     | \$ 2,497,399      | \$ 6,128,810      |
| Federal     | \$ 3,544,940      | \$ 8,995,462      |
| Other       | \$ 1,141,911      | \$ 2,853,320      |

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments in the respective fiscal year for the purposes of this part.

PART II

SECTION 3. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis and Budgeting (BUF 101) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2005-2007 the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees in the executive branch who are excluded from collective bargaining:

| <u>Fund</u> | <u>FY 2005-06</u> | <u>FY 2006-07</u> |
|-------------|-------------------|-------------------|
| General     | \$3,602,765       | \$8,988,601       |
| Special     | \$ 561,147        | \$1,410,698       |
| Federal     | \$ 229,787        | \$ 570,567        |
| Other       | \$ 306,782        | \$ 737,663        |

SECTION 4. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments in the respective fiscal year for the purposes of this part.

PART III

SECTION 5. There are appropriated or authorized from the sources of funding indicated below to Administration (JUD 601) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2005-2007 all collective bargaining cost items in the agreements negotiated with the exclusive bargaining representatives of collective bargaining units (2), (3), (4), (6), (8), and (13):

| <u>Fund</u> | <u>FY 2005-06</u> | <u>FY 2006-07</u> |
|-------------|-------------------|-------------------|
| General     | \$1,957,335       | \$4,810,864       |
| Special     | \$ 51,845         | \$ 128,397        |

SECTION 6. Funds appropriated or authorized by this part shall be allotted by the chief justice in the respective fiscal year for the purposes of this part.

PART IV

SECTION 7. There are appropriated or authorized from the source of funding indicated below to Administration (JUD 601) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2005-2007 salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees of the judiciary who are excluded from collective bargaining:

| <u>Fund</u> | <u>FY 2005-06</u> | <u>FY 2006-07</u> |
|-------------|-------------------|-------------------|
| General     | \$261,583         | \$686,963         |
| Special     | \$ 2,174          | \$ 5,150          |

SECTION 8. The sums appropriated or authorized by this part shall be allotted by the chief justice in the respective fiscal year for the purposes of this part.

PART V

SECTION 9. There are appropriated or authorized from the source of funding indicated below to hospital care — Hawaii Health Systems Corporation (HTH 210) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2005-2007 all collective bargaining cost items in agreements with the exclusive bargaining representatives of collective bargaining units (2), (3), (4), (6), (8), and (13) assigned to the Hawaii health systems corporation:

| <u>Fund</u> | <u>FY 2005-06</u> | <u>FY 2006-07</u> |
|-------------|-------------------|-------------------|
| General     | \$1,029,852       | \$2,556,899       |

SECTION 10. Funds appropriated or authorized by this part shall be allotted by the director of finance to the Hawaii health systems corporation in the respective fiscal year for the purposes of this part.

PART VI

SECTION 11. There are appropriated or authorized from the source of funding indicated below to hospital care — Hawaii Health Systems Corporation (HTH 210) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2005-2007 the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees assigned to the Hawaii health system corporation who are excluded from collective bargaining:

| <u>Fund</u> | <u>FY 2005-2006</u> | <u>FY 2006-07</u> |
|-------------|---------------------|-------------------|
| General     | \$311,889           | \$796,523         |

SECTION 12. Funds appropriated or authorized by this part shall be allotted by the director of finance to the Hawaii health system corporation in the respective fiscal year for the purposes of this part.

PART VII

SECTION 13. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from

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federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 14. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2006, and June 30, 2007, of the respective fiscal years, shall lapse as of those dates.

SECTION 15. This Act shall take effect on July 1, 2005.

(Approved June 3, 2005.)

**ACT 99**

H.B. NO. 1599

A Bill for an Act Making Appropriations for Collective Bargaining Cost Items.

*Be It Enacted by the Legislature of the State of Hawaii:*

**PART I**

SECTION 1. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis and Budgeting (BUF 101) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2005-2007, the Hawaii employer-union health benefits trust fund costs in the agreements negotiated with the exclusive bargaining representatives of collective bargaining units (2), (3), (4), (6), (8), (9), and (13):

|               | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|---------------|---------------------|---------------------|
| General funds | \$4,612,788         | \$10,219,696        |

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments in the respective fiscal year for the purposes of this part.

**PART II**

SECTION 3. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis and Budgeting (BUF 101) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2005-2007, the Hawaii employer-union health benefits trust fund costs for state officers and employees in the executive branch who are excluded from collective bargaining:

|               | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|---------------|---------------------|---------------------|
| General funds | \$614,116           | \$1,356,683         |

SECTION 4. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments in the respective fiscal year for the purposes of this part.

**PART III**

SECTION 5. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from

federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 6. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2006, and June 30, 2007, of the respective fiscal years, shall lapse as of those dates.

SECTION 7. This Act shall take effect on July 1, 2005.

(Approved June 3, 2005.)

**ACT 100**

S.B. NO. 945

A Bill for an Act Making an Appropriation for Collective Bargaining Cost Items.

*Be It Enacted by the Legislature of the State of Hawaii:*

**PART I**

SECTION 1. There are appropriated or authorized from the sources of funding indicated below to program planning, analysis, and budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for the 2005-2007 fiscal biennium all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit (5):

|               | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|---------------|---------------------|---------------------|
| General funds | \$19,139,381        | \$73,557,571        |

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments for expenditure in the respective fiscal year for the purposes of this part.

**PART II**

SECTION 3. There are appropriated or authorized from the sources of funding indicated below to program planning, analysis, and budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for the 2005-2007 fiscal biennium the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining who belong to the same compensation plans as those officers and employees within collective bargaining unit (5):

|               | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|---------------|---------------------|---------------------|
| General funds | \$1,295,074         | \$3,567,636         |

SECTION 4. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments for expenditure in the respective fiscal year for the purposes of this part.

**PART III**

SECTION 5. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from

**ACT 101**

federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 6. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2006, and June 30, 2007, of the respective fiscal year, shall lapse as of those dates.

SECTION 7. This Act shall take effect on July 1, 2005.

(Approved June 6, 2005.)

**ACT 101**

S.B. NO. 1580

A Bill for an Act Making Appropriations for Collective Bargaining Cost Items.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to provide funds pursuant to section 89-11(g), Hawaii Revised Statutes, due to an impasse in negotiations on issues involving the employer-union health benefits trust fund.

**PART I**

SECTION 2. There are appropriated or authorized from the source and funding indicated below to program planning, analysis, and budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2005-2007 the Hawaii employer-union health benefits trust fund costs in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit (5):

|               | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|---------------|---------------------|---------------------|
| General funds | \$454,142           | \$4,195,883         |

SECTION 3. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments for expenditure in each respective fiscal year for the purposes of this part.

**PART II**

SECTION 4. There are appropriated or authorized from the source and funding indicated below to program planning, analysis, and budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2005-2007 the Hawaii employer-union health benefits trust fund costs authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees in the department of education who are excluded from collective bargaining and belong to the same compensation plans as those officers and employees within bargaining unit (5):

|               | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|---------------|---------------------|---------------------|
| General funds | \$1,603             | \$8,383             |

SECTION 5. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments for expenditure in each respective fiscal year for the purposes of this part.



## PART III

SECTION 6. The cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 7. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2006, and June 30, 2007, of the respective fiscal years shall lapse as of those dates.

SECTION 8. This Act shall take effect on July 1, 2005.

(Approved June 6, 2005.)

## ACT 102

H.B. NO. 497

A Bill for an Act Relating to Uncollectible Accounts.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 40-82, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) The judiciary may from time to time prepare lists of all delinquent ~~[fines and restitution, which]~~ receivables that in its judgment are uncollectible. The ~~[fines or restitution]~~ delinquent receivables that the judiciary finds to be uncollectible shall be entered in a special record and be deleted from the other books kept by the judiciary, and the judiciary shall thereupon be released from any further accountability for their collection; provided that no account shall be so deleted until it ~~[shall have]~~ has been delinquent for at least two years. Any ~~[fines or restitution]~~ delinquent receivables so written off may be transferred back to the judiciary’s accounts receivable if the judiciary finds that the alleged facts as previously presented to it were not true, or that the ~~[fines or restitution]~~ delinquent receivables are in fact collectible, or that the ~~[fines or restitution]~~ delinquent receivables have become collectible. Nothing in this section shall preclude a person to whom restitution is owed from pursuing collection of the debt.

As used in this section, “delinquent receivables” means fines, restitution, monetary assessments, fees, surcharges, penalties, sanctions, court costs, and other payment that is past due.

(c) The judiciary shall submit an annual report to the legislature, no later than twenty days prior to the convening of each regular session, ~~[which]~~ that shall summarize for the immediately preceding fiscal year, the types and amounts of uncollectible delinquent ~~[fines and restitution]~~ receivables that either were:

- (1) Entered in a special record and deleted from the judiciary’s other books; or
- (2) Transferred back to the judiciary’s accounts receivable.’’

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 6, 2005.)

A Bill for an Act Relating to State Bonds.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Declaration of findings with respect to the general obligation bonds authorized by this Act. Pursuant to the clause in Article VII, Section 13 of the State Constitution which states: "Effective July 1, 1980, the legislature shall include a declaration of findings in every general law authorizing the issuance of general obligation bonds that the total amount of principal and interest, estimated for such bonds and for all bonds authorized and unissued and calculated for all bonds issued and outstanding, will not cause the debt limit to be exceeded at the time of issuance", the legislature finds and declares as follows:

- (1) Limitation on general obligation debt. The debt limit of the state is set forth in Article VII, Section 13 of the State Constitution, which states in part: "General obligation bonds may be issued by the State; provided that such bonds at the time of issuance would not cause the total amount of principal and interest payable in the current or any future fiscal year, whichever is higher, on such bonds and on all outstanding general obligation bonds to exceed: a sum equal to twenty percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance until June 30, 1982; and thereafter, a sum equal to eighteen and one-half percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance." Article VII, Section 13 also provides that in determining the power of the State to issue general obligation bonds, certain bonds are excludable, including "reimbursable general obligation bonds issued for a public undertaking, improvement or system but only to the extent that reimbursements to the general fund are in fact made from the net revenue, or net user tax receipts, or combination of both, as determined for the immediately preceding fiscal year" and bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor, but only to the extent the principal amount of such bonds does not exceed seven per cent of the principal amount of outstanding general obligation bonds not otherwise excluded under said Article VII, Section 13.
- (2) Actual and estimated debt limits. The limit on principal and interest of general obligation bonds issued by the State, actual for fiscal year 2004-2005 and estimated for each fiscal year from 2005-2006 to 2008-2009, is as follows:

| <u>Fiscal<br/>Year</u> | <u>Net General<br/>Fund Revenues</u> | <u>Debt Limit</u> |
|------------------------|--------------------------------------|-------------------|
| 2001-2002              | \$3,412,344,368                      |                   |
| 2002-2003              | 3,766,052,192                        |                   |
| 2003-2004              | 3,894,091,730                        |                   |
| 2004-2005              | 4,223,595,000                        | \$682,803,445     |
| 2005-2006              | 4,366,027,000                        | 732,830,567       |
| 2006-2007              | 4,593,328,000                        | 769,829,013       |
| 2007-2008              | 4,868,973,000                        | 812,948,583       |
| 2008-2009              | (not applicable)                     | 852,746,893       |

For fiscal years 2004-2005, 2005-2006, 2006-2007, 2007-2008, and 2008-2009, respectively, the debt limit is derived by multiplying the average of the net general fund revenues for the three preceding fiscal years by eighteen and one-half per cent. The net general fund revenues for fiscal years 2001-2002, 2002-2003, and 2003-2004 are actual, as certified by the director of finance in the Statement of the Debt Limit of the State of Hawaii as of July 1, 2004, dated November 26, 2004. The net general fund revenues for fiscal years 2004-2005 to 2007-2008 are estimates, based on general fund revenue estimates made as of March 8, 2005, by the council on revenues, the body assigned by Article VII, Section 7 of the State Constitution to make such estimates, and based on estimates made by the department of budget and finance of those receipts which cannot be included as general fund revenues for the purpose of calculating the debt limit, all of which estimates the legislature finds to be reasonable.

- (3) Principal and interest on outstanding bonds applicable to the debt limit.
  - (A) According to the department of budget and finance, the total amount of principal and interest on outstanding general obligation bonds, after the exclusions permitted by Article VII, Section 13 of the State Constitution, for determining the power of the State to issue general obligation bonds within the debt limit as of April 1, 2005, is as follows for fiscal year 2005-2006 to fiscal year 2011-2012:

| <u>Fiscal<br/>Year</u> | <u>Principal<br/>and Interest</u> |
|------------------------|-----------------------------------|
| 2005-2006              | \$471,772,500                     |
| 2006-2007              | 508,203,720                       |
| 2007-2008              | 512,472,623                       |
| 2008-2009              | 538,152,339                       |
| 2009-2010              | 450,484,704                       |
| 2010-2011              | 428,565,250                       |
| 2011-2012              | 374,350,406                       |

The department of budget and finance further reports that the amount of principal and interest on outstanding bonds applicable to the debt limit generally continues to decline each year from fiscal year 2012-2013 to fiscal year 2024-2025 when the final installment of \$20,198,173 shall be due and payable. (B) The department of budget and finance further reports that the outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is \$191,000,000, all or part of which is excludable in determining the power of the State to issue general obligation bonds, pursuant to Article VII, Section 13 of the State Constitution.

- (4) Amount of authorized and unissued general obligation bonds and guaranties and proposed bonds and guaranties. (A) As calculated from the state comptroller's bond fund report as of February 28, 2005, adjusted for lapses totaling \$25,228,301 proposed in House Bill No. 100, H.D. 1, S.D. 1, C.D. 1<sup>1</sup> (the General Appropriations Act of 2005), and \$500,000 proposed in House Bill No. 500, H.D. 2, S.D. 2, C.D. 1<sup>2</sup> (the Judiciary Appropriations Act of 2005), the total amount of authorized but unissued general obligation bonds is \$906,696,521. The total amount of general obligation bonds authorized in this Act is \$807,916,000. The total amount of general obligation bonds previously authorized and

unissued, as adjusted, and the general obligation bonds authorized in this Act is \$1,714,612,521. (B) As reported by the department of budget and finance the outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is \$191,000,000, all or part of which is excludable in determining the power of the State to issue general obligation bonds, pursuant to Article VII, Section 13 of the State Constitution.

- (5) Proposed general obligation bond issuance. As reported therein for the fiscal years 2004-2005, 2005-2006, 2006-2007, 2007-2008, and 2008-2009, the State proposed to issue \$225,000,000 in general obligation bonds during the remainder of fiscal year 2004-2005, \$250,000,000 semi-annually during the fiscal year 2005-2006, \$200,000,000 semi-annually during the fiscal year 2006-2007, \$175,000,000 semi-annually during the fiscal year 2007-2008, and \$120,000,000 semi-annually during the fiscal year 2008-2009. It has been the practice of the State to issue twenty-year serial bonds with principal repayments beginning the fifth year, the bonds payable in substantially equal annual installments of principal and interest payment with interest payments commencing six months from the date of issuance and being paid semi-annually thereafter. It is assumed that this practice will continue to be applied to the bonds that are proposed to be issued.
- (6) Sufficiency of proposed general obligation bond issuance to meet the requirements of authorized and unissued bonds, as adjusted, and bonds authorized by this Act. From the schedule reported in paragraph (5), the total amount of general obligation bonds that the State proposes to issue during the fiscal years 2004-2005 to 2007-2008 is \$1,475,000,000. An additional \$240,000,000 is proposed to be issued in fiscal year 2008-2009. The total amount of \$1,475,000,000 which is proposed to be issued through fiscal year 2007-2008 is sufficient to meet the requirements of the authorized and unissued bonds, as adjusted, the total amount of which is \$1,714,612,521 reported in paragraph (4), except for \$239,612,521. It is assumed that the appropriations to which an additional \$239,612,521 in bond issuance needs to be applied will have been encumbered as of June 30, 2008. The \$240,000,000 which is proposed to be issued in fiscal year 2008-2009 will be sufficient to meet the requirements of the June 30, 2008 encumbrances in the amount of \$239,612,521. The amount of assumed encumbrances as of June 30, 2008 is reasonable and conservative, based upon an inspection of June 30 encumbrances of the general obligation bond fund as reported by the state comptroller. Thus, taking into account the amount of authorized and unissued bonds, as adjusted, and the bonds authorized by this Act versus the amount of bonds proposed to be issued by June 30, 2008, and the amount of June 30, 2008 encumbrances versus the amount of bonds proposed to be issued in fiscal year 2008-2009, the legislature finds that in the aggregate, the amount of bonds proposed to be issued is sufficient to meet the requirements of all authorized and unissued bonds and the bonds authorized by this Act.
- (7) Bonds excludable in determining the power of the State to issue bonds. As noted in paragraph (1), certain bonds are excludable in determining the power of the State to issue general obligation bonds. (A) General obligation reimbursable bonds can be excluded under certain conditions. It is not possible to make a conclusive determination as to the

amount of reimbursable bonds which are excludable from the amount of each proposed bond issued because:

- (i) It is not known exactly when projects for which reimbursable bonds have been authorized in prior acts and in this Act will be implemented and will require the application of proceeds from a particular bond issue; and
- (ii) Not all reimbursable general obligation bonds may qualify for exclusion.

However, the legislature notes that with respect to the principal and interest on outstanding general obligation bonds, according to the department of budget and finance, the average proportion of principal and interest which is excludable each year from the calculation against the debt limit is 2.74 per cent for the ten years from fiscal year 2005-2006 to fiscal year 2014-2015. For the purpose of this declaration, the assumption is made that one per cent of each bond issue will be excludable from the debt limit, an assumption which the legislature finds to be reasonable and conservative. (B) Bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor can be excluded but only to the extent the principal amount of such guaranties does not exceed seven per cent of the principal amount of outstanding general obligation bonds not otherwise excluded under subparagraph (A) of this paragraph (7) and provided that the State shall establish and maintain a reserve in an amount in reasonable proportion to the outstanding loans guaranteed by the State as provided by law. According to the department of budget and finance and the assumptions presented herein, the total principal amount of outstanding general obligation bonds and general obligation bonds proposed to be issued, which are not otherwise excluded under Article VII, Section 13 of the State Constitution for the fiscal years 2004-2005, 2005-2006, 2006-2007, 2007-2008, and 2008-2009 are as follows:

| <u>Fiscal Year</u> | <u>Total amount of<br/>General Obligation Bonds<br/>not otherwise excluded by<br/>Article VII, Section 13<br/>of the State Constitution</u> |
|--------------------|---|
| 2004-2005          | \$4,169,877,840   |
| 2005-2006          | 4,413,622,158   |
| 2006-2007          | 4,511,674,506   |
| 2007-2008          | 4,542,933,015   |
| 2008-2009          | 4,425,203,300   |

Based on the foregoing and based on the assumption that the full amount of a guaranty is immediately due and payable when such guaranty changes from a contingent liability to an actual liability, the aggregate principal amount of the portion of the outstanding guaranties and the guaranties proposed to be incurred, which does not exceed seven per cent of the average amount set forth in the last column of the above table and for which reserve funds have been or will have been established as heretofore provided, can be excluded in determining the power of the State to issue general obligation bonds. As it is not possible to predict with a reasonable degree of certainty when a guaranty will change from a contingent liability to an actual liability, it is assumed in conformity with fiscal conservatism and prudence, that all

guaranties not otherwise excluded pursuant to Article VII, Section 13 of the State Constitution will become due and payable in the same fiscal year in which the greatest amount of principal and interest on general obligation bonds, after exclusions, occurs. Thus, based on such assumptions and on the determination in paragraph (8), all of the outstanding guaranties can be excluded.

- (8) Determination whether the debt limit will be exceeded at the time of issuance. From the foregoing and on the assumption that all of the bonds identified in paragraph (5) will be issued at an interest rate not to exceed 6.0 per cent, it can be determined from the following schedule that the bonds which are proposed to be issued, which include all authorized and unissued bonds previously authorized, as adjusted, general obligation bonds, and instruments of indebtedness under which the State incurs a contingent liability as a guarantor authorized in this Act, will not cause the debt limit to be exceeded at the time of such issuance:

| <u>Time of Issuance<br/>and Amount to be<br/>Counted Against<br/>Debt Limit</u> | <u>Debt Limit<br/>at Time of<br/>Issuance</u> | <u>Greatest Amount<br/>and Year of<br/>Highest Principal<br/>and Interest<br/>on Bonds and Guaranties</u> |
|---|---|---|
| 2nd half FY 2004-2005<br>\$222,750,000  | 682,803,445                                   | 551,517,339 (2008-2009)   |
| 1st half FY 2005-2006<br>\$247,500,000  | 732,830,567                                   | 566,367,339 (2008-2009)   |
| 2nd half FY 2005-2006<br>\$247,500,000  | 732,830,567                                   | 581,217,339 (2008-2009)   |
| 1st half FY 2006-2007<br>\$198,000,000  | 769,829,013                                   | 593,097,339 (2008-2009)   |
| 2nd half FY 2006-2007<br>\$198,000,000  | 769,829,013                                   | 604,977,339 (2008-2009)   |
| 1st half FY 2007-2008<br>\$173,250,000  | 812,948,583                                   | 615,372,339 (2008-2009)   |
| 2nd half FY 2007-2008<br>\$173,250,000  | 812,948,583                                   | 625,767,339 (2008-2009)   |
| 1st half FY 2008-2009<br>\$118,800,000  | 852,746,893                                   | 554,122,704 (2009-2010)   |
| 2nd half FY 2008-2009<br>\$118,800,000  | 852,746,893                                   | 561,250,704 (2009-2010)   |

- (9) Overall and concluding finding. From the facts, estimates, and assumptions stated in this declaration of findings, the conclusion is reached that the total amount of principal and interest estimated for the general obligation bonds authorized in this Act, and for all bonds authorized and unissued, and calculated for all bonds issued and outstanding, and all guaranties, will not cause the debt limit to be exceeded at the time of issuance.

SECTION 2. The legislature finds the bases for the declaration of findings set forth in this Act reasonable. The assumptions set forth in this Act with respect to the principal amount of general obligation bonds which will be issued, the amount of principal and interest on reimbursable general obligation bonds which are assumed to be excludable, and the assumed maturity structure shall not be deemed to be

binding, it being the understanding of the legislature that such matters must remain subject to substantial flexibility.

SECTION 3. Authorization for issuance of general obligation bonds. General obligation bonds may be issued as provided by law in an amount that may be necessary to finance projects authorized in House Bill No. 100, H.D. 1, S.D. 1, C.D. 1<sup>1</sup> (the General Appropriations Act of 2005) and House Bill No. 500, H.D. 2, S.D. 2, C.D. 1<sup>2</sup> (the Judiciary Appropriations Act of 2005), passed by the legislature during this regular session of 2005 and designated to be financed from the general obligation bond fund and from the general obligation bond fund with debt service cost to be paid from special funds; provided that the sum total of general obligation bonds so issued shall not exceed \$807,916,000.

Any law to the contrary notwithstanding, general obligation bonds may be issued from time to time in accordance with Section 39-16, Hawaii Revised Statutes, in such principal amount as may be required to refund any general obligation bonds of the State of Hawaii heretofore or hereafter issued pursuant to law.

SECTION 4. The provisions of this Act are declared to be severable and if any portion thereof is held to be invalid for any reason, the validity of the remainder of this Act shall not be affected.

SECTION 5. In printing this Act, the revisor of statutes shall substitute in section 1 and section 3 the corresponding act numbers for bills identified therein.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 6, 2005.)

#### Notes

1. Act 178.
2. Act 110.

## ACT 104

S.B. NO. 1003

A Bill for an Act Relating to Net Energy Metering.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 269, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§269- Maximum capacity of eligible customer-generator.** The eligible customer-generator shall have a capacity of not more than fifty kilowatts; provided that the public utilities commission may increase the maximum allowable capacity that eligible customer-generators may have to an amount greater than fifty kilowatts by rule or order.”

SECTION 2. Section 269-101, Hawaii Revised Statutes, is amended by amending the definition of “eligible customer-generator” to read as follows:

““Eligible customer-generator” means a metered residential or commercial customer, including a government entity, of an electric utility who owns and operates a solar, wind turbine, biomass, or hydroelectric energy generating facility, or a hybrid system consisting of two or more of these facilities, [~~with a capacity of not more than fifty kilowatts,~~] that is:

## ACT 104

- (1) Located on the customer's premises;
- (2) Operated in parallel with the utility's transmission and distribution facilities;
- (3) In conformance with the utility's interconnection requirements; and
- (4) Intended primarily to offset part or all of the customer's own electrical requirements."

SECTION 3. Section 269-102, Hawaii Revised Statutes, is amended to read as follows:

**“[H]§269-102[H] Standard contract or tariff; rate structure.** (a) Every electric utility shall develop a standard contract or tariff providing for net energy metering[-] and shall make this contract available to eligible customer-generators, upon request, on a first-come-first-served basis until the time that the total rated generating capacity produced by eligible customer-generators equals .5 per cent of the electric utility's system peak demand[-]; provided that the public utilities commission may increase, by rule or order, the total rated generating capacity produced by eligible customer-generators to an amount above .5 per cent of the electric utility's system peak demand.

(b) Each net energy metering contract or tariff shall be identical, with respect to rate structure, to the contract or tariff to which the same customer would be assigned if the customer was not an eligible customer-generator. The charges for all retail rate components for eligible customer-generators shall be based exclusively on the eligible customer-generator's net kilowatt-hour consumption over a monthly billing period. Any new or additional demand charge, standby charge, customer charge, minimum monthly charge, interconnection charge, or other charge that would increase an eligible customer-generator's costs beyond those of other customers in the rate class to which the eligible customer-generator would otherwise be assigned are contrary to the intent of this section, and shall not form a part of net energy metering contracts or tariffs.

(c) The public utilities commission may amend the rate structure or standard contract or tariff by rule or order.”

SECTION 4. Section 269-104, Hawaii Revised Statutes, is amended to read as follows:

**“[H]§269-104[H] Additional customer-generators.** Notwithstanding section 269-102, an electric utility is not obligated to provide net energy metering to additional customer-generators in its service area when the combined total peak generating capacity of all eligible customer-generators served by all the electric utilities in that service area furnishing net energy metering to eligible customer-generators equals .5 per cent of the system peak demand of those electric utilities[-]; provided that the public utilities commission may increase, by rule or order, the allowable percentage of the electric utility's system peak demand produced from eligible customer-generators in the electric utility's service area, whereupon the electric utility will be obligated to provide net energy metering to additional eligible customer-generators in that service area up to the increased percentage amount.”

SECTION 5. Section 269-105, Hawaii Revised Statutes, is amended to read as follows:

**“[H]§269-105[H] Calculation.** The net energy metering calculation shall be made by measuring the difference between the electricity supplied to the eligible customer-generator and [the]:



- (1) The electricity generated by the eligible customer-generator and fed back to the electric grid over a monthly billing period[.]; and
- (2) Any unused credits for excess electricity from the eligible customer-generator carried over from previous months since the last twelve-month reconciliation period.”

SECTION 6. Section 269-106, Hawaii Revised Statutes, is amended to read as follows:

**“[[§269-106]] Billing periods[.]; twelve-month reconciliation.** (a) Billing of net energy metering customers shall be [~~only~~] on a monthly basis[.]; provided that the last monthly bill for each twelve-month period shall reconcile for that twelve-month period the net electricity provided by the electric utility with:

- (1) The electricity generated by the eligible customer-generator and fed back to the electric grid over the monthly billing period; and
- (2) Any unused credits for excess electricity from the eligible customer-generator carried over from prior months since the last twelve-month reconciliation period.

(b) Credits for excess electricity from the eligible customer-generator that remain unused after each twelve-month reconciliation period may not be carried over to the next twelve-month period.”

SECTION 7. Section 269-107, Hawaii Revised Statutes, is amended to read as follows:

**“[[§269-107]] Net electricity consumers.** At the end of each monthly billing period, where the electricity supplied during the period by the electric utility exceeds [~~the electricity~~]:

- (1) The electricity generated by the eligible customer-generator during that same period[.]; and
- (2) Any unused credits for excess electricity from the eligible customer-generator carried over from prior months since the last twelve-month reconciliation period,

the eligible customer-generator is a net electricity consumer and the electric utility shall be owed compensation for the eligible customer-generator’s net kilowatt-hour consumption over that same period. The compensation owed for the eligible customer-generator’s net monthly kilowatt-hour consumption shall be calculated at the retail rate of the rate class the customer is normally assigned to.”

SECTION 8. Section 269-108, Hawaii Revised Statutes, is amended to read as follows:

**“[[§269-108]] Net electricity producers[.]; excess electricity credits and credit carry over.** At the end of each monthly billing period, where the electricity generated by the eligible customer-generator during the month exceeds the electricity supplied by the electric utility during that same period, the eligible customer-generator is a net electricity producer and the electric utility shall retain any excess kilowatt-hours generated during the prior monthly billing period[.]; provided that the excess electricity generated by the customer-generator, if any, in each monthly billing period shall be carried over to the next month as a monetary value to the credit of the eligible customer-generator, which credit may accumulate and be used to offset the compensation owed the electric utility for the eligible customer-generator’s net kilowatt-hour consumption for succeeding months within each twelve-month period; provided further that the electric utility shall reconcile the

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eligible customer-generator's electricity production and consumption for each twelve-month period as set forth in section 269-106. The eligible customer-generator shall not be owed any compensation for [these] excess kilowatt-hours unless the electric utility enters into a purchase agreement with the eligible customer-generator for those excess kilowatt-hours.”

SECTION 9. Section 269-109, Hawaii Revised Statutes, is amended to read as follows:

“~~[(§)269-109]~~ **Net electricity consumption or production information.** The electric utility shall provide every eligible customer-generator with net electricity consumption or production information with each regular monthly bill, which shall include [the]:

- (1) The current monetary balance owed the electric utility for net electricity consumed [or,];
- (2) The net electricity produced since the end of the last monthly billing period[.]; and
- (3) An accounting of the credits for excess electricity produced by the eligible customer-generator since the last twelve-month reconciliation period that shows credits applied to the monthly billing period and the balance of unused credits, if any.”

SECTION 10. Section 269-110, Hawaii Revised Statutes, is amended to read as follows:

“~~[(§)269-110]~~ **Termination by eligible customer-generators.** If an eligible customer-generator terminates the customer relationship with the electric utility, the electric utility shall reconcile the eligible customer-generator's consumption and production of electricity [during any part of a monthly billing], including any unused credits for excess electricity from the eligible customer-generator carried over from prior months, for the period following the last twelve-month reconciliation period to the date of termination of the relationship, according to the requirements set forth in this part.”

SECTION 11. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 13. This Act shall take effect on July 1, 2005.

(Approved June 6, 2005.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 105

H.B. NO. 1430

A Bill for an Act Relating to Solid Waste Control.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 342H, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§342H- Petty misdemeanor disposal of solid waste.** (a) A person commits the offense of petty misdemeanor disposal of solid waste if the person knowingly discards, disposes of, deposits, discharges, or dumps solid waste, or by contract or otherwise arranges directly or indirectly for the disposal of solid waste in an amount equal to or greater than one cubic yard in volume and less than ten cubic yards in volume, anywhere other than a permitted solid waste management system without the written approval of the director.

(b) Petty misdemeanor disposal of solid waste is punishable by:

- (1) A fine of not more than \$25,000 for each separate offense;
- (2) Not more than thirty days imprisonment for each offense; or
- (3) Revocation or suspension by court order of any contractor's license or any applicable certificate of authorization from the public utilities commission.

Each day of violation shall constitute a separate offense.

(c) Each fine collected for a violation of this section shall be distributed to the authorized agency that enforced the prohibition under which the fine was imposed.

(d) This section shall not apply to solid waste consisting solely of green waste. For the purposes of this section, “green waste” means solid waste that consists solely of leaves, grass clippings, garden and yard wastes, tree trunks, holiday trees, tree trimmings, and prunings, or any combination thereof.”

SECTION 2. Section 342H-30, Hawaii Revised Statutes, is amended to read as follows:

**“§342H-30 Prohibition[-]; civil.** (a) No person, including any public body, shall engage in the operation of an open dump.

(b) No person, including any public body, shall operate a solid waste management system without first securing approval in writing from the director.

(c) No person, including any public body, shall discard, dispose of, deposit, discharge, or dump solid waste, or by contract or otherwise arrange directly or indirectly for the disposal of solid waste in an amount equal to or greater than one [or less than ten cubic yards] cubic yard in volume anywhere other than a permitted solid waste management system without the prior written approval of the director. Each day of violation shall constitute a separate offense. This prohibition shall not be deemed to supersede any other disposal prohibitions established under federal, state, or county law, regulation, rule, or ordinance.

~~[(d) In addition to any other penalty provided by law, a person who knowingly violates or knowingly consents to the violation of this section shall be subject to one or more of the following penalties:~~

- ~~(1) Criminal penalties of not more than \$25,000 for each separate offense;~~
- ~~(2) Not more than thirty days imprisonment for each offense; or~~

## ACT 105

- (3) ~~Revocation or suspension by court order of any contractor's license to operate as a contractor or any applicable certificate of authorization from the public utilities commission.~~

~~Each day of a violation shall constitute a separate offense.~~

~~(e) Each fine collected under this section shall be distributed to the authorized agency that enforced the activity prohibited under this section; provided that when a fine is collected, fifty per cent of the fine shall be awarded to the person, if any, who reported the activity prohibited under this section.]''~~

SECTION 3. Section 342H-37, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) A person commits the offense of felony disposal of solid waste if the person:

- (1) Knowingly discards, disposes of, deposits, discharges, or dumps solid waste, or by contract or otherwise arranges directly or indirectly for the disposal of solid waste in an amount equal to or greater than ten cubic yards in volume anywhere other than a permitted solid waste management system without the written approval of the director;
- (2) After having been sentenced under this section or section [342H-30] ~~342H-~~ on two separate and prior occasions, knowingly discards, disposes of, deposits, discharges, or dumps solid waste, or by contract or otherwise arranges directly or indirectly for the disposal of solid waste in an amount equal to or greater than one cubic yard in volume anywhere other than a permitted solid waste management system without the written approval of the director; or
- (3) Knowingly discards, disposes of, deposits, discharges, or dumps solid waste, or by contract or otherwise arranges directly or indirectly for the disposal of solid waste anywhere other than a permitted solid waste management system without the written approval of the director for which the expense of recovering, removing, restoring, and lawfully disposing of the solid waste exceeds \$1,500.

(b) ~~[The penalties under this section shall supersede the penalties under section 342H-30, but otherwise this]~~ This section shall not supersede any other disposal prohibitions established under federal, state, or county law, ordinance, regulation, or rule.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect upon its approval.

(Approved June 7, 2005.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 106

H.B. NO. 1758

A Bill for an Act Relating to Unemployment Benefits.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 383-23.5, Hawaii Revised Statutes, is amended to read as follows:

**“§383-23.5 Retirement payments.** (a) For any week with respect to which an individual is receiving a pension (which shall include a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment) under a plan maintained or contributed to by a base period or chargeable employer (as determined under applicable law), the weekly benefit amount payable to [sueh] the individual for [sueh] the week shall be reduced (but not below zero):

- (1) By one-half the prorated weekly amount of the pension if at least half but less than one hundred per cent of the contributions to the plan were provided by [sueh] the individual; [or]
- (2) By the entire prorated weekly amount of the pension if paragraph (1) or paragraph (3) does not apply; or
- (3) By no part of the pension if the entire contributions to the plan were provided by [sueh] the individual, or by the individual and an employer (or any other person or organization) who is not a base period or chargeable employer as determined under applicable law.

(b) No reduction shall be made under this section by reason of the receipt of a pension if the services performed by the individual during the base period (or remuneration received for [sueh] the services) for [sueh] the employer did not affect the individual’s eligibility for, or increase the amount of, [sueh] the individual’s pension, retirement or retired pay, annuity, or similar payment. [The conditions specified by this subsection shall not apply to pensions paid under the federal Social Security Act or the Railroad Retirement Act of 1974, or the corresponding provisions of prior law. Payments made under those Acts shall be treated solely in the manner specified by subsection (a)(1), (2), and (3).]

(c) Subsections (a) and (b) shall only apply to new claims filed with an effective date prior to July 1, 2005.

(d) With respect to new claims filed with an effective date beginning on or after July 1, 2005:

- (1) For any week with respect to which an individual is receiving a pension under a plan maintained or contributed to by a base period or chargeable employer, the weekly benefit amount payable to the individual for the week shall be reduced (but not below zero) by an amount equal to the amount of the pension which is reasonably attributable to that week. For this paragraph to apply, the services performed for the employer by the individual in the base period (or remuneration for the services) must affect eligibility for, or increase the amount of the pension; and
- (2) Paragraph (1) shall not apply to any pension if the individual has made any contribution to the plan maintained by the base period or chargeable employer.

(e) Notwithstanding any provision under this section, the amount of any pension, retirement or retired pay, annuity, or other similar periodic payment under the Social Security Act or the Railroad Act of 1974 shall not result in a reduction of the weekly benefit amount payable to an individual under this section.”

**ACT 107**

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2005.

(Approved June 7, 2005.)

**ACT 107**

H.B. NO. 447

A Bill for an Act Relating to the Office of Hawaiian Affairs.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 10, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§10- Authority over disbursements.** (a) Except as provided in subsection (b), and notwithstanding any other law to the contrary, the office shall have and exercise the power to make all necessary and appropriate disbursements of its moneys by issuing checks in its own name and by any other means.

(b) The office shall have and exercise the power to deposit any of its moneys in any banking institution within or outside the State, to the extent necessary to implement subsection (a).

(c) The department of accounting and general services, with the approval of the office of Hawaiian affairs, may continue to perform the payroll function of the office, including the issuance of salary checks for the office’s employees.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect on July 1, 2006.

(Approved June 7, 2005.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 108**

S.B. NO. 702

A Bill for an Act Relating to Antitrust.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 480-1, Hawaii Revised Statutes, is amended by amending the definition of “person” or “persons” to read as follows:

““Person” or “persons” includes individuals, corporations, firms, trusts, partnerships, limited partnerships, limited liability partnerships, limited liability limited partnerships, limited liability companies, and incorporated or unincorporated associations, existing under or authorized by the laws of this State, or any other state, or any foreign country.”

SECTION 2. Section 480-7, Hawaii Revised Statutes, is amended to read as follows:

**“§480-7 Mergers, acquisitions, holdings, and divestitures.** (a) No [corporation] person shall acquire and hold, directly or indirectly, [from and after August 21, 1961,] the whole or any part of the stock [or other share capital], interest, or membership of any other [corporation,] person, or the whole or any part of the assets of any other [corporation] person, where the effect of [such] the acquisition and holding may be substantially to lessen competition, or to tend to create a monopoly in any line of commerce in any section of the State; provided that this subsection shall not apply to [corporations purchasing such] any person acquiring and holding the stock, interest, or membership solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition[.] or the creation of a monopoly in any line of commerce in any section of the State. Nor shall anything in this subsection prevent a [corporation] person from causing the formation of a subsidiary [corporations] business entity for the actual carrying on of [their] its immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock, interest, or membership of [the] a subsidiary [corporation,] business entity, when the effect of the formation is not substantially to lessen competition.

[(b) No corporation shall hold, directly or indirectly, the whole or any part of the stock or other share capital of any other corporation, or the whole or any part of the assets of any other corporation, acquired prior to August 21, 1961, where the effect of such holding is substantially to lessen competition or to tend to create a monopoly in any line of commerce in any section of the State.]

As used in this subsection:

“Control” means:

- (1) Owning or having the power to vote eighty per cent or more of any class of voting securities of the subsidiary;
- (2) Having the power to elect, by any means, a majority of the directors; or
- (3) Having the power to exercise a dominant influence over the management and policies of the subsidiary.

“Subsidiary” means any person that is under the control of a person.

(b) Notwithstanding any other provision in this chapter to the contrary, any person who may or shall be injured in the person’s business or property because of anything prohibited under subsection (a) may bring an action for injunctive relief against the proposed merger or acquisition. In any action brought pursuant to this subsection, the court, as it deems just, may award to a prevailing party and enter as part of its order or judgment, a reasonable sum for costs and expenses incurred, including reasonable attorney’s fees.

(c) Where the court finds that the holding of [such] the whole or any part of the stock, [share capital,] interest, membership, or assets [is] of any other person may be substantially to lessen competition or [tends] to tend to create a monopoly[.] in any line of commerce in any section of the State,<sup>1</sup> and is therefore not in the public interest, then the court [shall] may order the divestiture or other disposition of [such stocks, share capital,] the stock, interest, membership, or assets[.] of the [corporation,] person, and [shall] prescribe a reasonable time, manner, and degree of the divestiture or other disposition thereof; provided that the court shall not order the divestiture or other disposition of the assets of the [corporation] person unless it is necessary to eliminate the lessening of competition or the tendency to create a monopoly[.] and the assets are reasonably identifiable and separable, and it can be done without causing undue hardship on the economic entity[.]”

SECTION 3. Section 480-13, Hawaii Revised Statutes, is amended by amending subsections (a) to (c) to read as follows:

“(a) Except as provided in subsections (b) and (c), any person who is injured in the person’s business or property by reason of anything forbidden or declared unlawful by this chapter:

- (1) May sue for damages sustained by the person, and, if the judgment is for the plaintiff, the plaintiff shall be awarded a sum not less than \$1,000 or threefold damages by the plaintiff sustained, whichever sum is the greater, and reasonable [attorneys] attorney’s fees together with the costs of suit; provided that indirect purchasers injured by an illegal overcharge shall recover only compensatory damages, and reasonable [attorneys] attorney’s fees together with the costs of suit in actions not brought under section 480-14(c); and
- (2) May bring proceedings to enjoin the unlawful practices, and if the decree is for the plaintiff, the plaintiff shall be awarded reasonable [attorneys] attorney’s fees together with the [eost] costs of suit.

(b) Any consumer who is injured by any unfair or deceptive act or practice forbidden or declared unlawful by section 480-2:

- (1) May sue for damages sustained by the consumer, and, if the judgment is for the plaintiff, the plaintiff shall be awarded a sum not less than \$1,000 or threefold damages by the plaintiff sustained, whichever sum is the greater, and reasonable [attorneys-2] attorney’s fees together with the costs of suit; provided that where the plaintiff is an elder, the plaintiff, in the alternative, may be awarded a sum not less than \$5,000 or threefold any damages sustained by the plaintiff, whichever sum is the greater, and reasonable [attorneys-2] attorney’s fees together with the costs of suit. In determining whether to adopt the \$5,000 alternative amount in an award to an elder, the court shall consider the factors set forth in section 480-13.5; and
- (2) May bring proceedings to enjoin the unlawful practices, and if the decree is for the plaintiff, the plaintiff shall be awarded reasonable [attorneys-2] attorney’s fees together with the [eost] costs of suit.

(c) The remedies provided in subsections (a) and (b) shall be applied in class action and de facto class action lawsuits or proceedings, including actions brought on behalf of direct or indirect purchasers; provided that:

- (1) The minimum \$1,000 recovery provided in subsections (a) and (b) shall not apply in a class action or a de facto class action lawsuit;
- (2) In class actions or de facto class actions where both direct and indirect purchasers are involved, or where more than one class of indirect purchasers are involved, a defendant shall be entitled to prove as a partial or complete defense to a claim for compensatory damages that the illegal overcharge has been passed on or passed back to others who are themselves entitled to recover so as to avoid the duplication of recovery of compensatory damages;
- (3) That portion of threefold damages in excess of compensatory damages shall be apportioned and allocated by the court in its exercise of discretion so as to promote effective enforcement of this chapter and deterrence from violation of its provisions;
- (4) In no event shall an indirect purchaser be awarded less than the full measure of compensatory damages attributable to the indirect purchaser;
- (5) In any lawsuit or lawsuits in which claims are asserted by both direct purchasers and indirect purchasers, the court is authorized to exercise its discretion in the apportionment of damages, and in the transfer and consolidation of cases to avoid the duplication of the recovery of



- damages and the multiplicity of suits, and in other respects to obtain substantial fairness;
- (6) In any case in which claims are being asserted by a part of the claimants in a court of this State and another part of the claimants in a court other than of this State, where the claims arise out of same or overlapping transactions, the court is authorized to take all steps reasonable and necessary to avoid duplication of recovery of damages and multiplicity of suits, and in other respects, to obtain substantial fairness;
  - (7) In instances where indirect purchasers file an action and obtain a judgment or settlement prior to the completion of a direct purchaser's action in courts other than this State, the court shall delay disbursement of the damages until such time as the direct purchaser's suits are resolved to either final judgment, consent decree or settlement, or in the absence of a direct purchaser's lawsuit in the courts other than this State by direct purchasers, the expiration of the statute of limitations, or in such manner that will minimize duplication of damages to the extent reasonable and practicable, avoid multiplicity of suit, and obtain substantial fairness; and
  - (8) In the event damages in a class action or de facto class action remain unclaimed by the direct or indirect purchasers, the class representative or the attorney general shall apply to the court and such funds shall escheat to the State upon showing that reasonable efforts made by the State to distribute the funds have been unsuccessful."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 7, 2005.)

**Note**

1. Comma should be underscored.

**ACT 109**

H.B. NO. 450

A Bill for an Act Relating To The Budget Of The Office Of Hawaiian Affairs.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to appropriate funds for the biennial budget of the office of Hawaiian affairs and this Act shall be known and may be cited as the "Office of Hawaiian Affairs Appropriations Act of 2005."

SECTION 2. Unless otherwise clear from the context, as used in this Act: "Program ID" means the unique identifier of the specific program, and consists of the abbreviation for the office of Hawaiian affairs followed by a designated number for the program.

"Means of financing", or "MOF", means the source from which funds are appropriated or authorized, as the case may be, to be expended for the programs and projects specified in this Act. Letter symbols following appropriations have the following meanings:

- A: General Funds
- T: Trust Funds

**ACT 109**

“Position ceiling” means the maximum number of permanent positions authorized for a particular program during a specified period or periods, as noted by an asterisk.

SECTION 3. The following sums, or so much thereof as may be necessary to accomplish the purposes and programs designated herein, are appropriated or authorized, as the case may be, from the sources of funding specified to the office of Hawaiian affairs for the fiscal biennium beginning July 1, 2005, and ending June 30, 2007. The total general fund expenditures and the number of permanent positions established in each fiscal year of the biennium shall not exceed the sums and the position ceiling indicated for each year, except as provided elsewhere in this Act.

**PROGRAM APPROPRIATIONS**

| ITEM NO.                | PROG. ID                        | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS      |       |                     |       |
|-------------------------|---------------------------------|---------|------------------|---------------------|-------|---------------------|-------|
|                         |                                 |         |                  | FISCAL YEAR 2005-06 | M O F | FISCAL YEAR 2006-07 | M O F |
| <b>Hawaiian Affairs</b> |                                 |         |                  |                     |       |                     |       |
| 1.                      | OHA150 - OFFICE OF THE TRUSTEES |         |                  |                     |       |                     |       |
|                         | OPERATING                       |         | OHA              | .63*                |       | .60*                |       |
|                         |                                 |         | OHA              | 34,206A             |       | 34,206A             |       |
|                         |                                 |         | OHA              | 4.37*               |       | 4.40*               |       |
|                         |                                 |         | OHA              | 222,095T            |       | 232,508T            |       |
| 2.                      | OHA160 - ADMINISTRATION         |         |                  |                     |       |                     |       |
|                         | OPERATING                       |         | OHA              | 7.40*               |       | 7.12*               |       |
|                         |                                 |         | OHA              | 963,488A            |       | 963,488A            |       |
|                         |                                 |         | OHA              | 29.60*              |       | 29.88*              |       |
|                         |                                 |         | OHA              | 2,272,648T          |       | 2,357,925T          |       |
| 3.                      | OHA175 - BENEFICIARY ADVOCACY   |         |                  |                     |       |                     |       |
|                         | OPERATING                       |         | OHA              | 2.40*               |       | 2.31*               |       |
|                         |                                 |         | OHA              | 1,868,585A          |       | 1,868,585A          |       |
|                         |                                 |         | OHA              | 17.60*              |       | 17.69*              |       |
|                         |                                 |         | OHA              | 2,818,181T          |       | 2,869,991T          |       |

SECTION 4. Provided that the general fund appropriations in section 3 of this Act shall be expended by the office of Hawaiian affairs.

SECTION 5. Provided that of the funds appropriated for beneficiary advocacy (OHA 175), the sum of \$365,000 in general funds and \$365,000 in trust funds for fiscal year 2005-2006 shall be expended for services contracted to Alu Like, Inc.

SECTION 6. Provided that of the funds appropriated for beneficiary advocacy (OHA 175), the sum of \$365,000 in general funds and \$365,000 in trust funds for fiscal year 2006-2007 shall provide for social services to office of Hawaiian affairs beneficiaries to include information and referral services, case management and counseling, establishment of individual development accounts, financial literacy, and financial assistance. Referral services include those relating to education assistance, employment and income security, individual and family care, health needs, housing, legal services, genealogy research, business assistance, and general information; provided further that notwithstanding section 10-17(e), Hawaii Revised Statutes, any funds expended for the purposes of this section shall be in accordance with chapter 103D or 103F, Hawaii Revised Statutes, as appropriate.

SECTION 7. Provided that of the funds appropriated for beneficiary advocacy (OHA 175), the sum of \$353,604 in general funds and \$353,604 in trust funds for fiscal year 2005-2006 shall be expended for the gifted and talented native Hawaiian children program, Na Pua No'eau.

SECTION 8. Provided that of the funds appropriated for beneficiary advocacy (OHA 175), the sum of \$353,604 in general funds and \$353,604 in trust funds for fiscal year 2006-2007 shall provide for educational enrichment programs for native Hawaiian children in grades K through 12 throughout the State of Hawaii. Program activities are to be designed to optimize learning for Hawaiian students and are intended to develop a stronger interest in learning, connect learning and education to one's Hawaiian identity, and explore possible educational, career and academic goals the students may have not considered; provided further that notwithstanding section 10-17(e), Hawaii Revised Statutes, any funds expended for the purposes of this section shall be in accordance with chapter 103D or 103F, Hawaii Revised Statutes, as appropriate.

SECTION 9. Provided that of the funds appropriated for beneficiary advocacy (OHA 175), the sum of \$592,302 in general funds and \$592,302 in trust funds for fiscal year 2005-2006 shall be expended for the native Hawaiian rights and land title projects contractually administered through the native Hawaiian legal corporation.

SECTION 10. Provided that of the funds appropriated for beneficiary advocacy (OHA 175), the sum of \$592,302 in general funds and \$592,302 in trust funds for fiscal year 2006-2007 shall provide legal services and legal representation to office of Hawaiian affairs beneficiaries for: the assertion and defense of quiet title actions; ahupua'a and kuleana tenant rights, including rights of access and rights to water; land title assistance, including review of title, genealogy, and other traditional and customary practices; protection of culturally significant places; and preservation of native Hawaiian land trust entitlements; provided further that notwithstanding section 10-17(e), Hawaii Revised Statutes, any funds expended for the purposes of this section shall be in accordance with chapter 103D or 103F, Hawaii Revised Statutes, as appropriate.

SECTION 11. Provided that whenever the need arises, the administrator of the office of Hawaiian affairs is authorized to transfer sufficient funds and positions between programs for operating purposes; provided further that these transfers shall not be inconsistent with legislative intent; and provided further that a report of these fund transfers shall be made to the legislature no later than thirty days prior to the convening of the 2006 and 2007 regular sessions.

SECTION 12. In the event manifest clerical, typographical, or other mechanical errors are found in this Act, the board of trustees of the office of Hawaiian affairs is hereby authorized to correct such errors. All changes made pursuant to this section shall be reported to the legislature at its next session.

SECTION 13. This Act shall take effect on July 1, 2005.

(Approved June 8, 2005.)

A Bill for an Act Relating to the Judiciary.

*Be It Enacted by the Legislature of the State of Hawaii:*

**PART I. GENERAL PROVISIONS**

SECTION 1. This Act shall be known and may be cited as the Judiciary Appropriations Act of 2005.

SECTION 2. Unless otherwise clear from the context, as used in this Act:

(a) "Program ID" means the unique identifier for the specific program and consists of the abbreviation for the judiciary (JUD) followed by a designated number for the program.

(b) "Means of Financing", or "MOF", means the source from which funds are appropriated, or authorized, as the case may be, to be expended for the programs and projects specified in this Act. All appropriations are followed by letter symbols. The letter symbols, where used, shall have the following meanings:

- A General funds
- B Special funds
- C General obligation bond funds
- N Other federal funds
- W Revolving funds

(c) "Position ceiling" means the maximum number of permanent positions authorized for a particular program during a specified period or periods, as noted by an asterisk.

**PART II. PROGRAM APPROPRIATIONS**

SECTION 3. The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are appropriated or authorized from the sources of funding specified to the judiciary for the fiscal biennium beginning July 1, 2005, and ending June 30, 2007. The total expenditures and the number of permanent positions established in each fiscal year of the fiscal biennium shall not exceed the sums and the position ceilings indicated for each year, except as provided in this Act.

**PROGRAM APPROPRIATIONS**

| ITEM NO.                   | PROG. ID  | PROGRAM                | EXPENDING AGENCY | APPROPRIATIONS      |       |                     |       |
|----------------------------|-----------|------------------------|------------------|---------------------|-------|---------------------|-------|
|                            |           |                        |                  | FISCAL YEAR 2005-06 | M O F | FISCAL YEAR 2006-07 | M O F |
| <b>The Judicial System</b> |           |                        |                  |                     |       |                     |       |
| 1.                         | JUD101    | COURTS OF APPEAL       |                  |                     |       |                     |       |
|                            | OPERATING |                        | JUD              | 76.00*              |       | 76.00*              |       |
|                            |           |                        | JUD              | 6,294,630A          |       | 6,344,855A          |       |
|                            |           |                        |                  | 243,261W            |       | 243,261W            |       |
| 2.                         | JUD310    | FIRST JUDICIAL CIRCUIT |                  |                     |       |                     |       |
|                            | OPERATING |                        | JUD              | 1,054.50*           |       | 1,054.50*           |       |
|                            |           |                        | JUD              | 63,038,216A         |       | 63,217,182A         |       |
|                            |           |                        |                  | 35.00*              |       | 35.00*              |       |
|                            |           |                        | JUD              | 3,386,016B          |       | 3,386,016B          |       |

## PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID           | PROGRAM                 | EXPENDING AGENCY | APPROPRIATIONS      |       |                     |       |
|----------|--------------------|-------------------------|------------------|---------------------|-------|---------------------|-------|
|          |                    |                         |                  | FISCAL YEAR 2005-06 | M O F | FISCAL YEAR 2006-07 | M O F |
| 3.       | JUD320             | SECOND JUDICIAL CIRCUIT |                  |                     |       |                     |       |
|          | OPERATING          |                         | JUD              | 205.00*             |       | 205.00*             |       |
|          |                    |                         |                  | 13,267,672A         |       | 13,199,107A         |       |
| 4.       | JUD330             | THIRD JUDICIAL CIRCUIT  |                  |                     |       |                     |       |
|          | OPERATING          |                         | JUD              | 206.00*             |       | 206.00*             |       |
|          |                    |                         |                  | 15,151,926A         |       | 15,164,016A         |       |
| 5.       | JUD350             | FIFTH JUDICIAL CIRCUIT  |                  |                     |       |                     |       |
|          | OPERATING          |                         | JUD              | 94.00*              |       | 94.00*              |       |
|          |                    |                         |                  | 5,949,863A          |       | 6,159,463A          |       |
| 6.       | JUD601             | ADMINISTRATION          |                  |                     |       |                     |       |
|          | OPERATING          |                         | JUD              | 214.00*             |       | 214.00*             |       |
|          |                    |                         |                  | 18,645,539A         |       | 18,013,340A         |       |
|          |                    |                         | JUD              | 1.00*               |       | 1.00*               |       |
|          | INVESTMENT CAPITAL |                         | JUD              | 5,550,000B          |       | 5,550,000B          |       |
|          |                    |                         | JUD              | 95,500,000C         |       |                     | C     |

## PART III. PROGRAM PROVISIONS

SECTION 4. Provided that whenever the need arises, the chief justice, in administering an equitable and expeditious judicial process, is authorized to transfer sufficient funds and positions between programs for operating purposes; provided that no transfer shall be made to implement any collective bargaining contract signed after this legislature adjourns sine die.

SECTION 5. Provided that if the chief justice, or any agency, or any government unit secures federal funds or other property under any act of Congress, or any funds or other property from private organizations or individuals that are to be expended in connection with any program or works authorized by this Act, or otherwise, the chief justice, or the agency with the chief justice's approval, shall have the power to enter into the undertaking with the federal government, private organization, or individual; provided further that while most federal aid allocations are known and state matching funds are provided in this Act, in instances where programs for which federal-state cost sharing is not yet determined, the availability of federal funds shall be construed as a proportionate reduction of state costs whenever possible.

SECTION 6. Provided that the judiciary is authorized to transfer savings from its general fund appropriation to the driver education special fund to accommodate any temporary cash flow deficits.

SECTION 7. Provided that court space and resources be retained for family court services in the existing Honolulu court location; and provided further that the judiciary create a public participation process that allows stakeholder group representatives the opportunity to be involved in the planning process for the Kapolei court complex and the Honolulu-based family court.

PART IV. CAPITAL IMPROVEMENT PROJECTS

SECTION 8. The sum of \$95,500,000 appropriated or authorized in Part II of this Act for capital improvement projects shall be expended by the judiciary for the projects listed below; provided that several related or similar projects may be combined into a single project, if a combination is advantageous or convenient for implementation; and provided further that the total cost of the projects thus combined shall not exceed the total of the sums specified for the projects separately. The amount after each cost element and the total funding for each project listed in this Part is in thousands of dollars.

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.                       | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |       |
|--------------------------------|---------------------|---|------------------|---------------------------|-------|---------------------|-------|
|                                |                     |   |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F |
| <b>The Judicial System</b>     |                     |   |                  |                           |       |                     |       |
| <b>JUD601 - ADMINISTRATION</b> |                     |   |                  |                           |       |                     |       |
| 1.                             |                     | KAPOLEI JUDICIARY COMPLEX, OAHU   |                  |                           |       |                     |       |
|                                |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW JUDICIARY COMPLEX AT KAPOLEI, OAHU.   |                  |                           |       |                     |       |
|                                |                     | DESIGN  |                  | 1,000                     |       |                     |       |
|                                |                     | CONSTRUCTION  |                  | 85,000                    |       |                     |       |
|                                |                     | EQUIPMENT   |                  | 9,000                     |       |                     |       |
|                                |                     | TOTAL FUNDING   | JUD              | 95,000C                   |       |                     | C     |
| 2.                             |                     | DOMESTIC VIOLENCE CLEARINGHOUSE AND LEGAL HOTLINE, OAHU   |                  |                           |       |                     |       |
|                                |                     | LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE ACQUISITION AND RENOVATION OF ADDITIONAL OFFICE SPACE. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS. |                  |                           |       |                     |       |
|                                |                     | LAND  |                  | 1                         |       |                     |       |
|                                |                     | DESIGN  |                  | 1                         |       |                     |       |
|                                |                     | CONSTRUCTION  |                  | 497                       |       |                     |       |
|                                |                     | EQUIPMENT   |                  | 1                         |       |                     |       |
|                                |                     | TOTAL FUNDING   | JUD              | 500C                      |       |                     | C     |

PART V. ISSUANCE OF BONDS

SECTION 9. General obligation bonds may be issued, as provided by law, to yield the amount that may be necessary to finance projects authorized in part II and listed in part IV of this Act; provided that the sum total of the general obligation bonds so issued shall not exceed \$95,500,000.

SECTION 10. Any law to the contrary notwithstanding, the appropriation under Act 120, Session Laws of Hawaii 2003, section 11, as amended and re-numbered as Act 38, Session Laws of Hawaii 2004, section 3, in the amount indicated or balance thereof, allotted, encumbered, and unrequired, is hereby lapsed:

| <u>Item No.</u> | <u>Amount</u> | <u>(MOF)</u> |
|-----------------|---------------|--------------|
| JUD 601-7.03    | \$500,000     | C            |

## PART VI. SPECIAL PROVISIONS

SECTION 11. Any law or any provision of this Act to the contrary notwithstanding, the appropriations made for capital improvement projects authorized in part II and listed in part IV of this Act shall not lapse at the end of the fiscal year for which the appropriations are made; provided that all appropriations made for fiscal year 2005-2006 and fiscal year 2006-2007 which are unencumbered as of June 30, 2008, shall lapse as of that date.

SECTION 12. The judiciary is authorized to delegate to other state or county agencies the planning, acquisition of land, design, construction, and equipment of any capital improvement project when it is determined by the judiciary to be advantageous to do so.

SECTION 13. All unrequired balances in the general obligation bond fund, after the objectives of part II appropriations for capital improvements program purposes listed as projects in part IV have been met, shall be transferred to the judiciary project adjustment fund.

SECTION 14. If the amount allocated from the general obligation bond fund for a capital improvement project listed in part IV of this Act is insufficient, the chief justice may make supplemental allotments from the project adjustment fund; provided that supplemental allotments shall not be used to increase the scope of the project.

SECTION 15. Where it has been determined that changed conditions, such as reduction in the particular population being served, permit the reduction in the scope of a project listed in part IV, the chief justice may authorize such reduction of project scope.

SECTION 16. The chief justice shall determine when and the manner in which the authorized capital improvement projects shall be initiated. The chief justice shall notify the governor from time to time of the specific amounts required for the projects, and the governor shall provide for those amounts through the issuance of bonds authorized in part V of this Act.

SECTION 17. Any law or any provision to the contrary notwithstanding, the chief justice may supplement funds for any cost element for a capital improvement project authorized under this Act by transferring such sums as may be needed from the funds appropriated for other cost elements of the same project by this Act or by any other prior or future act that has not lapsed, provided that the total expenditure of funds for all cost elements for the project shall not exceed the total appropriation for that project.

SECTION 18. Provided that no position funded by federal funds shall be allocated or assigned to any program other than the program for which the federal funds are appropriated.

## PART VII. MISCELLANEOUS PROVISIONS AND EFFECTIVE DATE

SECTION 19. If any portion of this Act or its application to any person or circumstances is held to be invalid for any reason, the remainder of the Act and any provision thereof shall not be affected. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be independent of the

## ACT 111

invalid portion and shall be expended to fulfill the objective and intent of the appropriation to the extent possible.

SECTION 20. If any manifest clerical, typographical, or other mechanical error is found in this Act, the chief justice is authorized to correct the error. All changes made pursuant to this section shall be reported to the legislature at its next session.

SECTION 21. This Act shall take effect on July 1, 2005.

(Approved June 8, 2005.)

## ACT 111

S.B. NO. 620

A Bill for an Act Relating to Interstate Compact for the Supervision of Adult Offenders.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 353B-2, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§353B-2~~ **State compact administrator.** The state’s commissioner on the interstate commission for adult offender supervision shall be the compact administrator of the state council for interstate adult offender supervision established under section 353B-3. The compact administrator shall be responsible for, among other things:

- (1) Making final decisions relating to accepting or denying movement and related actions of offenders requesting transfer between states;
- (2) Investigating and taking action regarding matters of interstate movement of offenders within the State;
- (3) Keeping statistics and information on interstate compact movement of offenders;
- (4) Representing the State on matters relating to the authorized movement of offenders between states, and defending the State against disputed or challenged matters;
- (5) Facilitating policies and procedures governing the interstate movement of offenders through the state council;
- (6) Drafting legislation as requested by the state council or as required for proper interstate processing of offenders;
- (7) Budgeting and managing funds earmarked in the judiciary budget, to support compact activities; and
- (8) Establishing interstate service standards consistent with judiciary service standards for probationers and Hawaii paroling authority standards for parolees.”

SECTION 2. Section 353B-3, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§353B-3~~ **State council for interstate adult offender supervision.** (a) There is established the state council for interstate adult offender supervision, which shall be placed administratively in the judiciary. The council shall be composed of five members to be appointed as follows:



- (1) One member of the house of representatives appointed by the speaker of the house of representatives;
- (2) One member of the senate appointed by the senate president;
- (3) One member of the judiciary appointed by the chief justice of the supreme court;
- (4) The director of public safety, or the director's designee;
- (5) One member from the general public representing victims groups appointed by the governor; and
- (6) The compact administrator, appointed by the governor, with the advice and consent of the senate and the chief justice.

With the exception of the director of public safety, or the director's designee, the terms of all members shall be for four years; provided that the victims group representative and the compact administrator shall be subject to section 26-34. No person shall be appointed consecutively to more than two terms.

(b) The council shall exercise oversight and advocacy concerning its participation in commission activities and other duties as may be determined by the council, including development of policy concerning operations and procedures of the compact within the State. The council shall also have the authority to appoint a deputy compact administrator for parole from the Hawaii paroling authority, a deputy compact administrator for probation from the judiciary, and a member other than the compact administrator to cast a vote on behalf of the State at meetings of the interstate commission in which the compact administrator is absent."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 8, 2005.)

## ACT 112

H.B. NO. 1733

A Bill for an Act Relating to Biological Evidence.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

### "CHAPTER FORENSIC IDENTIFICATION

#### PART I. DEFINITIONS, ADMINISTRATION

§ -1 **Definitions.** In this chapter, unless a different meaning is plainly required:

"Autoradiograph" means photographic film developed when exposed to radioactivity appearing as darkened areas which represents DNA sequencing resulting from analysis of samples and specimens.

"Buccal swab" means a swab used to collect buccal cells from the mouth cavity by wiping the interior surface of the cheek.

"Conviction" means a judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere.

“Department” means the police department of the city and county of Honolulu.

“DNA” means deoxyribonucleic acid.

“DNA or forensic identification markers” has the same meaning as “profile”.

“FBI” means the Federal Bureau of Investigation.

“Print impression” means any fingerprint, thumbprint, palm print, or set of fingerprints or palm prints designated in the department’s rules or internal regulations adopted pursuant to section -3.<sup>1</sup>

“Profile” means data resulting from scientific analysis of samples and specimens.

“Prosecuting attorney” means an attorney from the department of the prosecuting attorney of any county, the department of the attorney general, or any other entity that prosecutes criminal cases.

“Sample” means human biologic material collected in a manner specified in the department’s rules or internal regulations adopted pursuant to section -3,<sup>1</sup> including but not limited to, saliva collected by means of buccal swab.

“Specimen” means human biologic material collected in a manner specified in the department’s rules or internal regulations adopted pursuant to section -3,<sup>1</sup> including but not limited to blood.

§ -2 **Administration.** The department shall be responsible for the management and administration of the state DNA database and data bank identification program and for liaison with the FBI and other relevant agencies regarding the State’s participation in a national DNA database such as the FBI’s Combined DNA Index System, that allows the storage and exchange of DNA records submitted by state and local forensic DNA laboratories nationwide.

## PART II. COLLECTION, ANALYSIS, AND REPOSITORY

§ -21 **Collection of specimens, samples, and print impressions at correctional facility or other detention facility.** (a) When the specimens, samples, or print impressions required by this chapter are collected at a correctional facility or other detention facility, including private correctional facilities, the chief administrative officer of the correctional facility or other detention facility shall be responsible for ensuring that:

- (1) The requisite specimens, samples, or print impressions are collected from qualifying offenders during the intake process at that facility or reasonably promptly thereafter; or
- (2) The requisite specimens, samples, or print impressions are collected as soon as administratively practicable after a qualifying offender reports to the facility for the purpose of providing specimens, samples, and print impressions; and
- (3) The specimens, samples, or print impressions collected pursuant to this chapter are forwarded immediately to the department and in compliance with this chapter.

(b) The specimens, samples, or print impressions required by this section shall be collected by a person using a collection kit approved by the department and in accordance with the requirements and procedures set forth in section -62.

§ -22 **Analysis and examination of specimens for identification purposes.** (a) The department shall authorize DNA analysis and other forensic identification analysis pursuant to this chapter only for identification purposes.

(b) The department shall perform examinations of print impressions pursuant to this chapter only for identification purposes.

**§ -23 Repository of samples and records.** (a) The department may designate itself or other appropriate entities to serve as repositories for blood specimens and buccal swab and other biological samples, and the designated entity shall analyze specimens and samples, and store, compile, correlate, compare, maintain, and use DNA and forensic identification profiles and records related to the following:

- (1) Forensic casework and forensics unknown;
- (2) Known and evidentiary specimens and samples from crime scenes or criminal investigations;
- (3) Missing or unidentified persons;
- (4) Persons required to provide specimens, samples, or print impressions under this chapter;
- (5) Legally obtained samples; and
- (6) Anonymous DNA records used for training, research, statistical analysis of populations, quality assurance, or quality control.

(b) The designated entity shall include files as necessary to implement this chapter.

(c) Nothing in this section shall be construed as requiring the designated entity to provide specimens or samples for quality control or other purposes to those who request specimens or samples.

(d) Samples, specimens, or profiles to be submitted for the state DNA database and data bank identification program shall include information as required by the department for ensuring search capabilities and compliance with National DNA Index System standards.

### **PART III. OFFENDERS SUBJECT TO COLLECTION OF SPECIMENS OR SAMPLES, OR PRINT IMPRESSIONS**

**§ -31 Offenders subject to collection.** (a) Any person, except for any juvenile, who is convicted of, or pleads guilty or no contest to, any felony offense, even if the plea is deferred, or is found not guilty by reason of insanity of any felony offense, shall provide buccal swab samples and print impressions of each hand, and, if required by the collecting agency's rules or internal regulations, blood specimens, required for law enforcement identification analysis.

(b) Testing pursuant to this section shall begin immediately for all persons who have been convicted of murder in any degree or any felony offense defined in chapter 846E, but shall not begin for other persons until thirty days after statewide publication of notice by the attorney general pursuant to section 1-28.5.

(c) The attorney general's notice, pursuant to subsection (b), may be provided in stages, beginning with notice of the beginning of testing of all persons not already mandated to be tested by subsection (b) who have been convicted of a class A felony, then notice of the beginning of testing of all persons not already mandated to be tested by subsection (b) who have been convicted of a class B felony, and finally notice of the beginning of testing of all persons not already mandated to be tested by subsection (b) who have been convicted of a class C felony.

(d) Nothing in this section shall be construed as prohibiting collection and analysis of specimens, samples, or print impressions as a condition of a plea for a non-qualifying offense.

**§ -32 Application to all qualifying persons.** (a) The provisions of this chapter, including the requirement that all specimens, samples, and print impres-

sions shall be provided as soon as administratively practicable shall apply to all qualifying persons regardless of sentence imposed, including any sentence of life without the possibility of parole, or any life or indeterminate term, or any other disposition rendered in the case of an adult.

(b) The provisions of this chapter, including the requirement that all specimens, samples, and print impressions be provided as soon as administratively practicable by qualified persons as described in this section shall apply regardless of placement or confinement in any mental hospital or other public or private treatment facility.

(c) The provisions of this chapter are mandatory and apply whether or not the court advises a person that the person must provide the data bank and database specimens, samples, and print impressions as a condition of probation, parole, or any plea of guilty, no contest, or not guilty by reason of insanity, or any admission to any of the offenses described in subsection (a).

**§ -33 Notification by prosecutor and inquiry by court.** (a) If at any stage of court proceedings the prosecutor determines that the specimens, samples, or print impressions required by this chapter have not already been taken from any person required to give specimens, samples, or print impressions by this chapter, the prosecutor shall notify the court orally on the record, or in writing, and request that the court order collection of the specimens, samples, or print impressions required by law. However, a failure by the prosecutor or any other law enforcement agency to notify the court shall not relieve a person of the obligation to provide specimens, samples, or print impressions pursuant to this chapter.

(b) Prior to final disposition or sentencing in a case, the court shall inquire and verify that the specimens, samples, or print impressions required by this chapter have been obtained and that this fact is included in the judgment. The judgment issued by the court shall indicate that the court has ordered the person to comply with the requirements of this chapter and that the person shall be included in the state DNA database and data bank identification program and be subject to this chapter. However, failure by the court to enter these facts in the judgment shall not invalidate a plea, conviction, or disposition, or otherwise relieve a person from the requirements of this chapter.

**§ -34 Collection from persons confined or in custody after conviction or adjudication.** A person, except for any juvenile, shall provide buccal swab samples and print impressions and, if required by the collecting agency's rules or internal regulations, blood specimens, immediately at intake, or during the prison reception center process, or as soon as administratively practicable at the appropriate custodial or receiving institution or program if:

- (1) The person is imprisoned or confined or placed in a state correctional facility, a county correctional facility, the department of public safety, a residential treatment program, or any state, county, private, or other facility after a conviction of any felony offense;
- (2) The person has a record of any past or present conviction of a qualifying offense described in section -31 or has a record of any past or present conviction or adjudication in any other court, including any state, federal, or military court, of any offense, that, if committed or attempted in this state, would have been punishable as an offense described in section -31; and
- (3) The person's blood specimens or buccal swab samples, and print impressions authorized by this chapter are not in the possession of the department or have not been recorded as part of the state DNA database and data bank identification program.

**§ -35 Collection from persons on probation, parole, or other release.**

(a) A person, except for any juvenile, shall provide buccal swab samples and print impressions and, if required pursuant to this chapter, blood specimens if:

- (1) The person is on probation or parole for any felony offense, whether or not that crime or offense is one set forth in section -31(a);
- (2) The person has a record of any past or present conviction of a qualifying offense described in section -31 or has a record of any past or present conviction or adjudication in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as an offense described in section -31; and
- (3) The person's blood specimens or buccal swab samples, and print impressions authorized by this chapter are not in the possession of the department or have not been recorded as part of the state DNA database and data bank identification program.

(b) The person shall have any required specimens, samples, or print impressions collected within twenty working days of being notified by the court, or a law enforcement agency or other entity authorized by the department. The specimens, samples, or print impressions shall be collected in accordance with section -21 at a correctional facility or a state, county, private, or other facility designated for this collection.

**§ -36 Collection from parole violators and others returned to custody.**

A person, except for any juvenile, shall provide buccal swab samples and print impressions and, if required by the collecting agency's rules or internal regulations, blood specimens or other biological samples, at a state correctional or other receiving institution, if:

- (1) The person has been released on parole, furlough, or other release for any offense or crime, whether or not set forth in section -31, and is returned to a state correctional or other institution for a violation of a condition of the person's parole, furlough, or other release, or for any other reason;
- (2) The person has a record of any past or present conviction of a qualifying offense described in section -31 or has a record of any past or present conviction or adjudication in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this State, would have been punishable as an offense described in section -31; and
- (3) The person's blood specimens or buccal swab samples, and print impressions authorized by this chapter are not in the possession of the department's DNA laboratory or have not been recorded as part of the state DNA database and data bank identification program.

**§ -37 Collection from persons accepted into Hawaii from other jurisdictions.**

(a) When an offender from another state is accepted into this state under any interstate compact, or under any other reciprocal agreement with any county, state, or federal agency, or any other provision of law, whether or not the offender is confined or released, the acceptance shall be conditional on the offender providing blood specimens, buccal swab samples, or print impressions pursuant to this chapter, if the offender has a record of any past or present conviction or adjudication in Hawaii of a qualifying offense described in section -31 or has a record of any past or present conviction or adjudication or had a disposition rendered in any other court, including any state, federal, or military court, of any offense that, if committed

or attempted in this state, would have been punishable as an offense described in section -31.

(b) If the person is not confined, the specimens, samples, or print impressions required by this chapter shall be provided within twenty working days after the person reports to the supervising agent or within five calendar days of notice to the person, whichever occurs first. The person shall report to a correctional facility in the county where the person resides or temporarily is located to have the specimens, samples, or print impressions collected pursuant to this chapter. The specimens, samples, or print impressions shall be collected in accordance with this chapter.

(c) If the person is confined, the person shall provide the blood specimens, buccal swab samples, or print impressions required by this chapter as soon as practicable after the person's receipt in a state, county, private, or other designated facility.

**§ -38 Collection of replacement specimen found spoiled or unusable.**

Whenever the department notifies the department of public safety or any other law enforcement agency that a biological specimen, sample, or print impression is not usable for any reason, the person who provided the original specimen, sample, or print impression shall submit to collection of additional specimens, samples, or print impressions. The department of public safety or other responsible law enforcement agency shall collect additional specimens, samples, or print impressions from these persons as necessary to fulfill the requirements of this chapter, and transmit these specimens, samples, or print impressions to the department.

**§ -39 Collection of specimen from sex offense registrants.** (a) If a person, except for any juvenile, is convicted of, pleads guilty or no contest to, or is found not guilty by reason of insanity of any of the offenses requiring registration pursuant to chapter 846E, and has given a blood specimen or other biological sample or samples to law enforcement for any purpose, the department is authorized to analyze, or direct a designated entity to analyze, the blood specimen and other biological sample or samples for forensic identification markers, including DNA markers, and to include the DNA and forensic identification profiles from these specimens and samples in the state DNA database and data bank identification program.

(b) This section applies whether or not the blood specimen or other biological sample originally was collected from a sexual offender pursuant to the State's DNA and forensic identification database and data bank program, and whether or not the crime committed predated the enactment of the State's DNA and forensic identification database and data bank program, or any amendments thereto. This section does not relieve a person convicted of a crime described in section -31(a), or otherwise subject to this chapter, from the requirement to give buccal swab samples and print impressions and, if required by the collecting agency's rules or internal regulations, any blood specimens for the state DNA database and data bank identification program as described in this chapter.

**§ -40 Collection of specimens from persons required to register under chapter 846E who have not yet provided samples.** (a) Any person who is required to register under chapter 846E who has not provided the specimens, samples, or print impressions described in this chapter for any reason, including the release of the person prior to the enactment of the state DNA database and data bank identification program, an oversight or error, or because of the transfer of the person from another state, the person shall give specimens, samples, or print impressions as described in this chapter for inclusion in the state DNA database and data bank identification program.

(b) At the time the person registers or updates the person's registration, the person shall receive an appointment designating a time and place for the collection of the specimens, samples, or print impressions described in this chapter, if the person has not already complied with this chapter.

(c) As specified in the appointment, the person shall report to a correctional facility in the county where the person resides or is temporarily located, to have specimens, samples, or print impressions collected pursuant to this chapter or other facility approved by the department for this collection. The specimens, samples, or print impressions shall be collected in accordance with this chapter.

(d) If, prior to the time of the required registration update, a person is notified by the department, a probation or parole officer, other law enforcement officer, or officer of the court that the person is subject to this chapter, then the person shall at a correctional facility or other facility approved by the department for this collection, provide the specimens, samples, or print impressions required by this chapter within ten calendar days of the notification.

**§ -41 Retroactive application.** Sections -31, -33, and -34 to -37 shall have retroactive application. Collection shall occur pursuant to sections -34 to -38 regardless of when the crime charged or committed became a qualifying offense pursuant to this chapter, and regardless of when the person was convicted of the qualifying offense described in section -31(a) or a similar crime under the laws of the United States or any other state, or pursuant to the United States Code of Military Justice, for commission of a qualifying offense described in section -31(a) or a similar crime under the laws of the United States or any other state.

#### **PART IV. CRIME SCENE AND RELATED EVIDENCE; COMPARISON AGAINST FORENSIC IDENTIFICATION DATA**

**§ -51 Analysis of crime scene samples.** The following entities are authorized to analyze crime scene samples and other samples of known and unknown origin and to compare and check the forensic identification profiles, including DNA profiles, of these samples against available DNA and forensic identification data banks and databases to establish identity and origin of samples for identification purposes:

- (1) Laboratories that are accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board, accredited by any certifying body approved by the Director of the FBI, or accredited by the successor to the Laboratory Accreditation Board;
- (2) Any law enforcement crime laboratory designated by the department that is accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board, accredited by any certifying body approved by the Director of the FBI, or accredited by the successor to the Laboratory Accreditation Board; and
- (3) Any other entity designated by the department by rule.

**§ -52 Anonymous analysis of specimens and samples.** Laboratories, including law enforcement laboratories, that are accredited by American Society of Crime Laboratory Directors/Laboratory Accreditation Board or any certifying body approved by the Director of the FBI who contract with the department may perform anonymous analysis of specimens and samples for forensic identification as provided in this chapter.

§ **-53 Analysis of forensic identification profiles.** A biological sample obtained from a suspect in a criminal investigation for the commission of any crime may be analyzed for forensic identification profiles, including DNA profiles, by any private or law enforcement crime laboratory accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board or any certifying body approved by the Director of the FBI and then compared by the department, in and between, as many cases and investigations as necessary, and searched against the forensic identification profiles, including DNA profiles, stored in the files of the state DNA database or data bank identification program or any available data banks or databases as part of the state DNA database and data bank identification program. The law enforcement investigating agency submitting a specimen, sample, or print impression to the department or law enforcement crime laboratory pursuant to this section shall inform the department within two years whether the person remains a suspect in a criminal investigation. Upon written notification from a law enforcement agency that a person is no longer a suspect in a criminal investigation, the department shall remove the suspect sample from its data bank files. However, any identification, warrant, arrest, or prosecution based upon a data bank or database match shall not be invalidated or dismissed due to a failure to purge or a delay in purging records.

§ **-54 Laboratories contributing DNA profiles to be accredited.** All laboratories contributing DNA profiles for inclusion in the state DNA data bank and database shall be accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board or any certifying body approved by the Director of the FBI. Additionally, each laboratory shall submit to the department for review the annual report required by the American Society of Crime Laboratory Directors Laboratory Accreditation Board or any certifying body approved by the Director of the FBI that documents the laboratory's adherence to American Society of Crime Laboratory Directors/Laboratory Accreditation Board standards or the standards of any certifying body approved by the Director of the FBI. The requirements of this section do not preclude DNA profiles developed in Hawaii from being searched in a national DNA database or data bank such as the FBI's Combined DNA Index System.

§ **-55 Other law enforcement DNA laboratories.** Nothing in this chapter shall preclude other law enforcement DNA laboratories from maintaining local forensic databases and data banks or performing forensic identification analyses, including DNA profiling, independent from the state DNA database and data bank identification program.

§ **-56 Limitations not cause for dismissal.** The limitation on the types of offenses set forth in section -31(a) that are subject to the collection and testing procedures of this chapter is for the purpose of facilitating the administration of this chapter by the department and shall not be considered cause for dismissing an investigation or prosecution or reversing a verdict or a disposition.

§ **-57 No invalidation based on erroneous placement or retention of specimens, samples, or print impressions.** The detention, arrest, wardship, adjudication, or conviction of a person based upon a data bank match or database information is not invalidated if it is determined that the specimens, samples, or print impressions were obtained or placed or retained in a data bank or database by mistake.



**PART V. SAMPLE AND SPECIMEN COLLECTION  
PARAPHERNALIA AND INSTRUCTIONS; CIVIL OR CRIMINAL  
LIABILITY FOR COLLECTION; AND DATA ENTRY**

§ -61 **Blood specimens, buccal swab samples, and print impressions shall be forwarded promptly to the department.** The director of public safety, the chief of police, or the administrator of the correctional facility, jail, or other facility at which the blood specimens, buccal swab samples, or print impressions were collected shall cause these specimens, samples, and print impressions to be forwarded promptly to the department. The specimens, samples, and print impressions shall be collected by a person using a department-approved collection kit and in accordance with the requirements and procedures set forth in section -62.

§ -62 **Procedures for the collection and forwarding of samples.** (a) The department of the attorney general shall provide all blood specimen collectors, buccal swab collectors, mailing tubes, labels, and instructions for the collection of the blood specimens, buccal swab samples, and print impressions. The specimens, samples, and print impressions shall thereafter be forwarded to the department for analysis of DNA and other forensic identification markers. Additionally, the department of the attorney general shall provide all print impression cards, mailing envelopes, and instructions for the collection of print impressions. The print impressions shall be forwarded to the department for maintenance in a file for identification purposes.

(b) Whenever withdrawal of blood is required by this chapter or by the collecting agency's rules or internal regulations, the withdrawal of blood shall be performed in a medically approved manner. Only health care providers trained and certified to draw blood may withdraw the blood specimens for the purposes of this chapter.

(c) Buccal swab samples may be procured by law enforcement or corrections personnel or other individuals trained to assist in buccal swab collection.

(d) Print impressions of each hand shall be taken on forms prescribed by the department of the attorney general. The print impression forms shall be forwarded to and maintained by the department of the attorney general. Print impressions taken at the time of the collection of samples or specimens shall be placed on the samples and specimens container and forms as directed by the department. The samples, specimens, and forms shall be forwarded to and maintained by the department.

(e) The law enforcement or custodial agency collecting specimens, samples, or print impressions is responsible for confirming that the person qualifies for entry into the state DNA database and data bank identification program prior to collecting the specimens, samples, or print impressions pursuant to this chapter.

(f) The department is responsible for establishing procedures for entering data bank and database information.

§ -63 **Limitations on civil and criminal liability.** (a) Persons authorized to draw blood or obtain samples or print impressions under this chapter for the data bank or database shall not be civilly or criminally liable either for withdrawing blood when done in accordance with medically accepted procedures, or for obtaining buccal swab samples by scraping inner cheek cells of the mouth, or print impressions when performed in accordance with standard professional practices.

(b) There shall be no civil or criminal cause of action against any law enforcement agency or the department, or any employee thereof, for a mistake in confirming a person's or sample's qualifying status for inclusion within the database or data bank or in placing an entry in a data bank or a database.

(c) The failure of the department or local law enforcement to comply with this chapter shall not invalidate an arrest, plea, conviction, or disposition.

**§ -64 Processing of offender specimens.** (a) To ensure expeditious and economical processing of offender specimens and samples for inclusion in the FBI's Combined DNA Index System and the state DNA database and data bank identification program, the department is authorized to contract with other laboratories, whether public or private, including law enforcement laboratories, that have the capability of fully analyzing offender specimens or samples within sixty days of receipt, for the anonymous forensic identification testing of specimens and samples as provided in this chapter and in accordance with the quality assurance requirement established by the FBI for its Combined DNA Index System.

(b) Contingent upon the availability of sufficient funds, the department shall immediately contract with other laboratories, whether public or private, including law enforcement laboratories, for the anonymous forensic identification testing of offender reference specimens or samples and any arrestee reference specimens or samples collected pursuant to section -31(a), as provided in subsection (a) of this section and in accordance with the quality assurance requirements established by the FBI for its Combined DNA Index System for any specimens or samples that are not fully analyzed and uploaded into the Combined DNA Index System database within six months of the receipt of the reference specimens or samples by the department.

## **PART VI. REQUEST FOR EXPUNGEMENT OF INFORMATION; PROCEDURE**

**§ -71 Expungement of DNA information from state DNA database and data bank identification program.** (a) A person whose DNA profile has been included in the state DNA database and data bank identification program pursuant to this chapter shall have the person's DNA specimen and sample destroyed and searchable database profile expunged from the program pursuant to section -72 if:

- (1) The person has no past or present offense which qualifies that person for inclusion within the state DNA database and data bank identification program; and
  - (2) There otherwise is no legal basis for retaining the specimen or sample or searchable profile.
- (b) A person requesting expungement of their DNA specimen, sample, and profile:

- (1) May make a written request to have the person's specimen and sample destroyed and searchable database profile expunged from the state DNA database and data bank identification program if the underlying conviction or disposition serving as the basis for including the DNA profile has been reversed and the case dismissed; and
- (2) Shall send a copy of the person's request to the trial court of the circuit that entered the conviction or rendered disposition in the case, to the department, and to the prosecuting attorney of the county in which the person was convicted or adjudicated, with proof of service on all parties.

(c) A court considering a request for expungement made pursuant to this section, shall grant the request by order pursuant to section -72(a) if the criteria for expungement under subsection (a) are met.

**§ -72 Destruction of samples and expungement of searchable DNA database profile.** (a) Except as provided below, the department shall destroy the

sample and expunge the searchable DNA database profile pertaining to the person who has no present or past qualifying offense of record upon receipt of a court order that verifies the applicant has made the necessary showing at a noticed hearing, and that includes all of the following:

- (1) The written request for expungement pursuant to section -71;
- (2) A certified copy of the court order reversing and dismissing the conviction or case, or a letter from the prosecuting attorney certifying that the underlying conviction has been reversed and the case dismissed;
- (3) A finding that written notice has been provided to the prosecuting attorney and the department of the request for expungement; and
- (4) A court order verifying that no retrial or appeal of the case is pending, that it has been at least one hundred eighty days since the defendant or minor has notified the prosecuting attorney and the department of the expungement request, and that the court has not received an objection from the department or the prosecuting attorney.

(b) Upon receipt of the order of the court pursuant to subsection (a), the department shall destroy any specimen or sample collected from the person and any searchable DNA database profile pertaining to the person, unless the department determines that the person is subject to the provisions of this chapter because of a past qualifying offense of record or is, or has otherwise become, obligated to submit a blood specimen or buccal swab as a result of a separate conviction, or finding of guilty or not guilty by reason of insanity for an offense described in section -31, or as a condition of a plea.

(c) The department is not required to destroy an autoradiograph or other item obtained from a blood specimen if evidence relating to another person subject to the provisions of this chapter would thereby be destroyed.

(d) Any identification, warrant, probable cause to arrest, or arrest based upon a data bank match shall not be invalidated due to a failure to expunge or a delay in expunging records.

(e) Notwithstanding any other provision of law, the designated entity is not required to expunge DNA profile or forensic identification information or destroy or return specimens, samples, or print impressions taken pursuant to this section based on a termination of a person's duty to register pursuant to chapter 846E.

**§ -73 No authorization to relieve a person of administrative duty to provide specimens, samples, or print impressions.** Notwithstanding any other provision of law, a judge is not authorized to relieve a person of the separate administrative duty to provide specimens, samples, or print impressions required by this chapter if a person was found not guilty by reason of insanity or pleads no contest to a qualifying offense as defined in section -31 or is given a deferred acceptance of plea under chapter 853.

**§ -74 Not a basis for invalidation of identification or suppression of identification evidence.** Nothing in this part shall be construed to invalidate an otherwise valid identification of a person by means of DNA testing or to provide the basis for a suppression of otherwise admissible evidence related to identification of a person based on DNA testing.

## **PART VII. EXEMPTION OF SPECIMEN FROM DISCLOSURE; CONFIDENTIALITY**

**§ -81 Exemption of specimen from disclosure.** (a) All DNA and forensic identification profiles and other identification information retained by the depart-

ment pursuant to this chapter shall be exempt from any law requiring disclosure of information to the public and are confidential except as otherwise provided in this chapter.

(b) All evidence and forensic samples containing biological material retained by the department or other state or local law enforcement agency are exempt from any law requiring disclosure of information to the public or the return of biological specimens, samples, or print impressions.

**§ -82 Confidentiality.** (a) Non-DNA forensic identification information may be filed with the other computerized data bank or database systems maintained by the department.

(b) The DNA and other forensic identification information retained by the department pursuant to this chapter shall not be included in the state summary criminal history information. However, nothing in this chapter precludes law enforcement personnel from entering into a person's criminal history information or offender file maintained by the department, the fact that the specimens, samples, or print impressions required by this chapter have or have not been collected from that person.

(c) The fact that the specimens, samples, or print impressions required by this chapter have been received by the department shall be included in the state summary criminal history information as soon as administratively practicable.

(d) The print impressions of each hand shall be filed and maintained by the department of the attorney general, and may be included in the state summary criminal history information.

(e) DNA samples, DNA profiles, and other forensic identification information shall be released only to law enforcement agencies, including but not limited to the department of the attorney general, parole officers of the department of public safety, hearing officers of the parole authority, probation officers, the department, and prosecuting attorneys' offices, unless otherwise specifically authorized this chapter.<sup>1</sup>

(f) Dissemination of DNA specimens, samples, and DNA profiles, and other forensic identification information to law enforcement agencies and prosecutors outside this State shall be performed in conformity with the provisions of this chapter.

(g) A defendant's DNA and other forensic identification information developed pursuant to this chapter shall be available to the person's defense counsel upon court order.

(h) Except as provided in subsection (g) and to protect the confidentiality and privacy of state DNA database and data bank identification program information, the department and DNA laboratories shall not otherwise be compelled in a criminal or civil proceeding to provide any DNA profile or database or data bank information, or information on its computer database program software or structures to any person or party seeking such records or information whether by subpoena or discovery, or other procedural device or inquiry.

**§ -83 Knowing use or disclosure by department employee of forensic identification information for other than criminal identification or exclusion purposes.** (a) If any employee of the department knowingly uses an offender specimen, sample, or DNA profile collected pursuant to this chapter for other than criminal identification or exclusion purposes, or knowingly discloses DNA or other forensic identification information developed pursuant to this section to an unauthorized individual or agency for other than criminal identification or exclusion purposes or for other than the identification of missing persons, in violation of this chapter, the department shall be liable in civil damages to the donor of the DNA

identification information in the amount of \$5,000 for each violation, plus attorney's fees and costs. In the event of multiple violations, total damages shall not exceed \$50,000 plus attorney's fees and costs.

(b) Notwithstanding any other law to the contrary, this section shall provide the sole and exclusive remedy against the department and its employees available to the donor of the DNA. The department's employee disclosing DNA identification information in violation of this chapter shall be absolutely immune from civil liability under any other law.

**§ -84 When disclosure is not a violation.** (a) It is not a violation of this chapter for a law enforcement agency, in its discretion, to publicly disclose the fact of a DNA profile match, or the name of the person identified by the DNA match when this match is the basis of law enforcement's investigation, arrest, or prosecution of a particular person, or the identification of a missing or abducted person.

(b) It is not a violation of this chapter to furnish DNA or other forensic identification information of the defendant to the person's defense counsel for criminal defense purposes in compliance with discovery.

(c) It is not a violation of this chapter for law enforcement to release DNA and other forensic identification information developed pursuant to this chapter to a jury or grand jury, or in a document filed with a court or administrative agency, or as part of a judicial or administrative proceeding, or for this information to become part of the public transcript or record of proceedings when, in the discretion of law enforcement, disclosure is necessary because the DNA information pertains to the basis for law enforcement's identification, arrest, investigation, prosecution, or exclusion of a particular person related to the case.

(d) It is not a violation of this chapter to include information obtained from a file in a transcript or record of a judicial proceeding, or in any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(e) It is not a violation of this chapter for the department, or an organization retained as an agent of the department, or a local public laboratory to use anonymous records or criminal history information obtained pursuant to this chapter for training, research, statistical analysis of populations, or quality assurance or quality control.

**§ -85 Confidentiality of computer software and database structures.** To maintain the computer system security of the state DNA database and data bank identification program, the computer software and database structures used by the DNA laboratory of the department to implement this chapter are confidential.

**PART VIII. DATA SHARING; POPULATION DATABASE OR DATA  
BANK INFORMATION; PROTOCOL, QUALITY CONTROL OR  
METHODOLOGY; SAMPLE SHARING; LOCAL DNA  
LABORATORIES; DISPOSAL**

**§ -91 Department permitted to share data, information, and samples.** (a) Nothing in this chapter shall prohibit the department from sharing or disseminating state DNA database and data bank identification program information or any analytical data and results generated for program purposes, or protocol and forensic DNA analysis methods and quality assurance or quality control procedures with any of the following:

- (1) Federal, state, or local law enforcement agencies;
- (2) Crime laboratories, whether public or private, that serve federal, state, and local law enforcement agencies that have been approved by the department;

- (3) The attorney general's office of any state;
- (4) Any state or federally authorized auditing agent or board that inspects or reviews the work of the department:
  - (A) To ensure that the department meets American Society of Crime Laboratory Directors Laboratory Accreditation Board LAB and FBI standards for accreditation and quality assurance standards necessary under this chapter; and
  - (B) To allow the State to participate in the FBI's Combined DNA Index System and other national or international crime-solving networks; or
- (5) Any third party that the department deems necessary to assist the department's crime laboratory with statistical analyses of the population database or to assist in the recovery or identification of human remains for humanitarian purposes, including identification of missing persons.
  - (b) The population databases and data banks of the department may be made available to and searched by the FBI and any other agency participating in the FBI's Combined DNA Index System or any other national or international law enforcement database or data bank system.
  - (c) The department may provide portions of biological samples, including blood specimens, saliva samples, and buccal swab samples collected pursuant to this chapter to local public law enforcement DNA laboratories for identification purposes; provided that the privacy provisions of this chapter are followed by the local public law enforcement laboratory and if each of the following conditions is met:
    - (1) The procedures used by the local public DNA laboratory for the handling of specimens and samples and the disclosure of results are the same as those established by the department pursuant to this chapter;
    - (2) The methodologies and procedures used by the local public DNA laboratory for DNA or forensic identification analysis are compatible with those used by the department, or otherwise are determined by the department to be valid and appropriate for identification purposes;
    - (3) Only tests of value to law enforcement for identification purposes are performed and a copy of the results of the analysis are sent to the department;
    - (4) All provisions of this chapter concerning privacy and security are followed; and
    - (5) The local public law enforcement DNA laboratory assumes all costs of securing the specimens and samples and provides appropriate tubes, labels, and materials necessary to secure the specimens and samples.

§ -92 **Local DNA laboratories.** Any local DNA laboratory that produces DNA profiles of known reference samples for inclusion within the permanent files of the state DNA database and data bank identification program shall follow the instructions of the department for production of DNA profiles.

§ -93 **Disposal of unused and expired specimens.** The department is authorized to dispose of unused specimens and samples, unused portions of specimens and samples, and expired specimens and samples in the normal course of business and in compliance with part XI of this chapter and in a reasonable manner as long as the disposal method is designed to protect the identity and origin of specimens and samples from disclosure to third persons who are not a part of law enforcement.

## PART IX. POWERS NOT AFFECTED

**§ -101 Law enforcement officer powers under other laws not affected.** Nothing in this chapter shall limit or abrogate any existing authority of law enforcement officers to take, maintain, store, and use DNA or forensic identification markers, blood specimens, buccal swab samples, saliva samples, or print impressions for identification purposes.

**§ -102 Authority under other laws not affected.** (a) Nothing in this chapter shall be construed to restrict the authority of local law enforcement to maintain its own DNA-related databases or data banks, or to restrict the department with respect to data banks and databases created by other statutory authority, including but not limited to databases related to fingerprints, firearms and other weapons, child abuse, domestic violence deaths, child deaths, driving offenses, missing persons, sex offender registration, and criminal justice statistics.

(b) Nothing in this chapter shall be construed to limit the authority of the medical examiner of the city and county of Honolulu or county coroners or their agents, in the course of their scientific investigation, to use genetic and DNA technology to inquire into and determine the circumstances, manner, and cause of death, or to employ or use outside laboratories, hospitals, or research institutions that use genetic and DNA technology.

## PART X. CRIMES

**§ -111 Refusal or failure to provide specimen for forensic identification.** (a) A person commits the offense of refusal or failure to provide specimen for forensic identification if the person is required by this chapter to provide any blood specimens, buccal swab samples, or print impressions and refuses or fails to provide any of the required blood specimens, buccal swab samples, or print impressions after the person has received written notice from the department, the department of public safety, any law enforcement personnel, or officer of the court that the person is required to provide each and every one of the blood specimens, buccal swab samples, and print impressions required by this chapter.

(b) Any person who negligently or recklessly fails to comply with this section shall be guilty of a misdemeanor.

**§ -112 Fraudulent use or manipulation of biometric sample or information.** (a) A person commits the offense of fraudulent use or manipulation of biometric sample or information if the person is required to submit a specimen sample or print impression pursuant to this chapter and intentionally or knowingly:

- (1) Facilitates the collection of a wrongfully attributed blood specimen, buccal swab sample, or print impression, with the intent that a government agent or employee be deceived as to the origin of a DNA profile or as to any identification information associated with a specimen, sample, or print impression required for submission pursuant to this chapter; or
- (2) Tampers with any specimen, sample, print, or the collection container for any specimen or sample, with the intent that any government agent or employee be deceived as to the identity of the person to whom the specimen, sample, or print relates.

(b) Fraudulent use or manipulation of biometric sample or information is a class C felony.

§ -113 **Unauthorized disclosure of DNA sample or profile.** (a) A person commits the offense of unauthorized disclosure of DNA sample or profile if the person intentionally or knowingly, in violation of this chapter:

- (1) Uses an offender sample or DNA profile for other than criminal identification or exclusion purposes; or
- (2) Discloses DNA or other forensic identification information developed pursuant to this section to an unauthorized individual or agency, for other than criminal identification or exclusion.

(b) Unauthorized disclosure of DNA sample or profile purposes is a misdemeanor.

§ -114 **Use of DNA sample or profile for financial gain.** (a) A person commits the offense of use of DNA sample or profile for financial gain if the person, for the purpose of financial gain, intentionally or knowingly, in violation of this chapter:

- (1) Uses an offender sample or DNA profile for other than criminal identification or exclusion purposes; or
- (2) Discloses DNA or other forensic identification information developed pursuant to this chapter to an unauthorized individual or entity, for other than criminal identification or exclusion purposes.

(b) Use of DNA sample or profile for financial gain is a misdemeanor for which, in addition to any other penalty provided by the penal code for a misdemeanor, a fine shall be imposed in an amount three times that of any financial gain received, or \$10,000, whichever is greater.

## PART XI. POST-CONVICTION DNA TESTING

§ -121 **Petition for post-conviction DNA testing.** Notwithstanding any other law or rule of court governing post-conviction relief to the contrary, a person who was convicted of and sentenced for a crime may file a motion, at any time, for DNA analysis of any evidence that:

- (1) Is in the custody or control of a police department, prosecuting attorney, laboratory, or court;
- (2) Is related to the investigation or prosecution that resulted in the judgment of conviction; and
- (3) May contain biological evidence.

§ -122 **Proceedings.** The court shall order the prosecuting attorney to answer a motion filed pursuant to section -121 not later than thirty days after filing of the motion. The court may thereafter deny the motion without hearing if the motion is patently frivolous because it is without a trace of support either in the record or in any materials submitted with the motion. The court shall conduct a hearing on the motion within ninety days of its filing if the allegations in the motion, taken as true, establish grounds for relief under section -123. If the court sets the motion for hearing, the court shall order that all evidence in the custody or control of a police department, prosecuting attorney, laboratory, or court that could be subjected to DNA analysis be preserved during the pendency of the proceeding. The intentional destruction of evidence after entry of the order shall constitute grounds for appropriate sanctions, including contempt of court under section 710-1077.

§ -123 **Order for post-conviction DNA testing.** (a) The court shall order testing after a hearing if it finds that:

- (1) A reasonable probability exists that the defendant would not have been prosecuted or convicted if exculpatory results had been obtained



through DNA analysis, even if the defendant later pled guilty or no contest;

- (2) Identity was or should have been an issue in the proceeding that led to the verdict or sentence;
- (3) The evidence sought to be analyzed has been identified with particularity and still exists in a condition that permits DNA analysis; provided that questions as to the chain of custody of the evidence shall not constitute grounds to deny the motion if the testing itself can establish the integrity of the evidence;
- (4) The evidence was not previously subjected to DNA analysis or was not subjected to analysis that can now resolve an issue not resolved by previous analysis; and
- (5) The application for testing is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

(b) The court may order testing after a hearing if it finds that:

- (1) A reasonable probability exists that DNA analysis of the evidence will produce results that would have led to a more favorable verdict or sentence for the defendant had the results been available at the proceeding leading to the verdict or sentence, even if the defendant pled guilty or no contest;
- (2) The evidence sought to be analyzed has been identified with particularity and still exists in a condition that permits DNA analysis; provided that questions as to the chain of custody of the evidence shall not constitute grounds to deny the motion if the testing itself can establish the integrity of the evidence;
- (3) The evidence was not previously subjected to DNA testing or was not subject to testing that can now resolve an issue not resolved by previous testing; and
- (4) The application for testing is made for the purpose of demonstrating that the defendant was guilty of a lesser offense or eligible for a more lenient sentence and not to unreasonably delay the execution of sentence or administration of justice.

(c) If evidence had previously been subjected to DNA analysis, by either the prosecution or defense, the court may order the prosecution or defense to provide each party and the court with access to the laboratory reports prepared in connection with the DNA analysis, as well as the underlying data and laboratory notes. If DNA or other analysis of evidence was previously conducted by either the prosecution or defense without knowledge of the other party, all information relating to the testing shall be disclosed by the motion for analysis or response. If the court orders DNA analysis under this section, the court shall order the production to each party and the court of any laboratory reports prepared in connection with the DNA analysis and, in its discretion, may order production of the underlying data and laboratory notes.

§ -124 Counsel. (a) The court may, at any time during proceedings under this part, appoint counsel for a defendant determined to be indigent pursuant to section 802-4.

(b) If the defendant has filed pro se, upon a showing that DNA testing may be material to the defendant's claim of wrongful conviction, the court shall appoint counsel for the defendant.

(c) The court, in its discretion, may refer pro se requests for DNA testing to qualified parties for further review, including but not limited to indigent defense organizations or clinical legal education programs, without appointing the parties as counsel at that time.

(d) If the defendant has retained private pro bono counsel, including but not limited to counsel from a nonprofit organization that represents indigent persons, the court may, in its discretion, award reasonable attorney's fees and costs at the conclusion of the litigation.

§ -125 **Discovery.** (a) At any time after a petition has been filed under this part:

- (1) The court may order the State to locate and provide the defendant with any documents, notes, logs, or reports relating to items of physical evidence collected in connection with the case, or otherwise assist the defendant in locating items of biological evidence that the State contends have been lost or destroyed;
- (2) The court may order the State to take reasonable measures to locate biological evidence that may be in its custody, or to assist the defendant in locating evidence that may be in the custody of a public or private hospital, public or private laboratory, or other facility; or
- (3) If evidence had previously been subjected to DNA testing, the court may order production of laboratory reports prepared in connection with the DNA testing, as well as the underlying data, and the laboratory notes.

(b) If any DNA or other biological evidence testing was previously conducted by either the prosecution or defense without knowledge of the other party, such testing shall be revealed in the motion for testing or response, if any.

(c) If the court orders DNA testing in connection with a proceeding brought under this part, the court shall order the production of any laboratory reports prepared in connection with the DNA testing, and may in its discretion order production of the underlying data, bench notes, or other laboratory notes.

(d) The results of any post-conviction DNA testing conducted under this part shall be disclosed to the prosecution, the defendant, and the court.

§ -126 **Retention of biological evidence.** (a) All evidence in the custody or control of a police department, prosecuting attorney, laboratory, or court that is related to the investigation or prosecution of a case in which there has been a judgment of conviction and that may contain biological evidence that could be used for DNA analysis shall be retained at least until the later occurring of either:

- (1) The exhaustion of all appeals of the case to which the evidence is related; or
- (2) The completion of any sentence, including any term of probation or parole, imposed on the defendant in the case to which the evidence relates.

(b) The attorney general shall establish procedures and protocols, which shall be uniform throughout the State, for the collection and preservation of evidence retained pursuant to this section.

§ -127 **Choice of laboratory.** When the court grants a motion under section -123, the evidence shall be analyzed at an independent laboratory meeting standards adopted pursuant to the DNA Identification Act of 1994 (42 U.S.C. 14131). If the defendant and the prosecuting attorney cannot agree on a laboratory to perform the analysis, the court shall select the laboratory.

§ -128 **Payment.** Analysis ordered pursuant to section -123(a) shall be paid for using funds from the DNA registry special fund established pursuant to section 706-603(9).<sup>1</sup> The court may require payment for analysis ordered pursuant to

section -123(b) to be made by the defendant, the DNA registry special fund, or a combination thereof.

§ **-129 Appeal.** In accordance with applicable rules of court, the defendant may appeal to the supreme court and intermediate court of appeals from an order denying a motion made pursuant to this part.

§ **-130 Successive motions.** (a) If the defendant has filed a prior motion for DNA testing under this part or any other provision of law, the defendant may file, and the court shall adjudicate, a successive motion or motions under this part; provided that the defendant asserts new or different grounds for relief, including but not limited to factual, scientific, or legal arguments not previously presented, or the availability of more advanced DNA technology.

(b) The court may also, in its discretion, adjudicate any successive motions if the interests of justice so require.

§ **-131 Additional orders.** (a) The court may in its discretion make such other orders as may be appropriate. This includes but is not limited to designating:

- (1) The type of DNA analysis to be used;
- (2) The testing procedures to be followed;
- (3) The preservation of some portion of the sample for replicating the testing;
- (4) Additional DNA testing, if the results of the initial testing are inconclusive or otherwise merit additional scientific analysis; and
- (5) The collection and DNA testing of elimination samples from third parties.

(b) DNA profile information from biological samples taken from any person pursuant to a motion for post-conviction DNA testing shall be exempt from any law requiring disclosure of information to the public.

§ **-132 Procedure after testing results are obtained.** (a) If the results of the post-conviction DNA testing are favorable to the defendant, the court shall conduct a hearing pursuant to applicable law or court rule governing post-conviction proceedings, notwithstanding any law or court rule that would otherwise bar such a hearing as untimely or procedurally defective, and thereafter make such orders as are necessary for disposition of those proceedings. If the results of the DNA analysis are not favorable to the defendant, the court shall give notice of the results to probation or parole authorities, as appropriate.

(b) Records reflecting the results of DNA analysis performed pursuant to this section, including the underlying data and laboratory notes, shall not be subject to disclosure pursuant to chapter 92F except to the extent of a conclusion that a particular person was, or was not, the source of the biological evidence analyzed.

(c) In any case as to which a motion is filed under this section, the prosecuting attorney shall give notice to the victim or surviving immediate family members of a homicide victim of the filing of the motion, any hearing that is held as a result, and its disposition. For purposes of this subsection, "victim" and "surviving immediate family members" have the same meaning as in section 801D-2.

(d) The court shall make appropriate findings of fact and conclusions of law in support of its disposition of a motion made pursuant to this section, regardless of whether a hearing was held.

§ **-133 Consent.** Nothing in this part shall be interpreted to prohibit a convicted person and the State from consenting to and conducting post-conviction DNA testing by agreement of the parties and without filing a motion for post-

conviction DNA testing under this part. Notwithstanding any other provision of law governing post-conviction relief, if DNA test results are obtained under testing conducted upon consent of the parties which are favorable to the defendant, the defendant may file, and the court shall adjudicate, a motion for post-conviction relief under the provisions of this part, based on the DNA test results.”

SECTION 2. Section 701-108, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

“(3) If the period prescribed in subsection (2) has expired, a prosecution may nevertheless be commenced for:

- (a) Any offense an element of which is either fraud or a breach of fiduciary obligation within three years after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is oneself not a party to the offense, but in no case shall this provision extend the period of limitation by more than six years from the expiration of the period of limitation prescribed in subsection (2); ~~and~~
- (b) Any offense based on misconduct in office by a public officer or employee at any time when the defendant is in public office or employment or within two years thereafter, but in no case shall this provision extend the period of limitation by more than three years from the expiration of the period of limitation prescribed in subsection (2)~~[-];~~  
and
- (c) Any felony offense involving evidence containing deoxyribonucleic acid from the offender, if a test confirming the presence of deoxyribonucleic acid is performed prior to expiration of the period of limitation prescribed in subsection (2), but in no case shall this provision extend the period of limitation by more than ten years from the expiration of the period of limitation prescribed in subsection (2).”

SECTION 3. Section 701-118, Hawaii Revised Statutes, is amended by amending subsection<sup>2</sup> (7) to read as follows:

“(7) “Person,” “he,” “him,” “actor,” and “defendant” include any natural person, including any natural person whose identity can be established by means of scientific analysis, including but not limited to scientific analysis of deoxyribonucleic acid and fingerprints, whether or not the natural person’s name is known, and, where relevant, a corporation or an unincorporated association;”

SECTION 4. Section 706-603, Hawaii Revised Statutes, is amended to read as follows:

~~“§706-603 [Mental and medical examination; deoxyribonucleic acid collection. (1) As used in this section, unless the context otherwise requires:~~

~~“Conviction” means that a verdict has been rendered by a judge or jury, or a plea of guilty or nolo contendere has been accepted by the court.~~

~~“DNA” means deoxyribonucleic acid.~~

~~“Licensed psychologist” means psychologists licensed under chapter 465 but also includes psychologists exempt from licensure under section 465-3(a)(3).~~

~~“Sexual offense” means an offense as defined in chapter 846E as a sexually violent offense or a criminal offense against a victim who is a minor.~~

~~“Violent offense” means murder, or attempted murder, in any degree.~~

~~(2) Before imposing sentence, the court may order a defendant who has been convicted of a felony or misdemeanor to submit to mental or other medical observation and examination for a period not exceeding sixty days or a longer period, not to~~

exceed the length of permissible imprisonment, as the court determines to be necessary for the purpose. In addition thereto or in the alternative, the court may appoint one or more qualified psychiatrists, physicians, or licensed psychologists to make the examination. The examiner or examiners shall be appointed from a list of certified examiners as determined by the state department of health. The report of the examination shall be submitted to the court.

(3) After entry of a plea of guilty or no contest or return of a verdict of guilty, a defendant who has been convicted of a sexual or violent offense shall provide two samples of blood for DNA analysis.

(4) A defendant who has been convicted of a sexual or violent offense and who is in custody at a jail, prison, hospital, school, or other institution shall provide two samples of blood for DNA analysis. The person in charge of such an institution, or that person's designee, shall arrange for the sample to be collected and analyzed.

(5) A defendant who has been convicted of a sexual or violent offense and who is not in custody shall report in person to any police station in the county in which the defendant resides or is present to schedule an appointment to provide two samples of blood for DNA analysis. A defendant required to report to a police station under this subsection shall do so within:

- (a) Thirty days of July 20, 1998;
- (b) Thirty days of conviction; or
- (c) Thirty days after arrival in this State, if the defendant expects to be present in this State for a period exceeding thirty days.

(6) A defendant who has been charged with a sexual or violent offense and who has been found unfit to proceed or acquitted pursuant to chapter 704, or any state, federal, or military law similar to chapter 704 shall provide two samples of blood for DNA analysis. The person in charge of the jail, prison, hospital, school, or other institution where the defendant is in custody, or that person's designee, shall arrange for the sample to be collected and analyzed. A defendant who is not in custody and who is required to provide blood under this subsection shall report in person to any police station in the county in which the defendant resides or is present to schedule an appointment to provide two samples of blood. A defendant required to report to a police station under this subsection shall do so within:

- (a) Thirty days of July 20, 1998;
- (b) Thirty days of the release following an acquittal or finding of unfitness to proceed under chapter 704; or any state, federal, or military law similar to chapter 704; or
- (c) Thirty days after arrival in the State,

if the defendant resides or expects to be present in the State for a period exceeding thirty days.

(7) Blood withdrawn pursuant to this section shall be withdrawn only by a person authorized to withdraw blood under section 291E-12. The results shall be recorded, preserved, and disseminated in a manner consistent with the requirements of chapter 846. A defendant who has already provided the necessary samples of blood pursuant to this section shall be relieved of any further requirement to provide blood for DNA analysis, unless the court orders otherwise.

**(8)] DNA analysis monetary assessment; DNA registry special fund. (1)**

In addition to any disposition authorized by chapter 706 or 853, [a] every defendant convicted of [a sexual or violent] a felony offense [after July 20, 1998 may] shall be ordered to pay a monetary assessment of \$500 or the actual cost of the DNA analysis, whichever is less. The court [shall not order the defendant to pay] may reduce the monetary assessment [unless] if the court finds, based on evidence presented by the defendant and not rebutted by the State, that the defendant is [or] not and will not be able to pay the full monetary assessment[-] and, based on the

finding, shall instead order the defendant to pay an assessment that the defendant will be able to pay within five years.

(2) Notwithstanding any other law to the contrary, the assessment and penalty provided by this section shall be in addition to, and not in lieu of, and shall not be used to offset or reduce, any fine or restitution authorized or required by law. All assessments and penalties shall be paid into the DNA registry special fund established in subsection [(9)-] (3).

[(9)] (3) There is established a special fund to be known as the DNA registry special fund which shall be administered by the attorney general. The fund shall consist of:

- (a) All assessments and penalties ordered pursuant to [subsection (8);] subsection (1);
- (b) All other moneys received by the fund from any other source; and
- (c) Interest earned on any moneys in the fund.

Moneys in the DNA registry special fund shall be used for DNA collection, DNA testing, and related costs of recording, preserving, and disseminating DNA information pursuant to [this section.] chapter .

[(10)] (4) Restitution to the victim of a sexual or violent crime shall be made before payment of the monetary assessment.

[(11) Any person required to provide blood samples under this section who negligently or recklessly fails to comply shall be guilty of a misdemeanor; and any person who intentionally or knowingly fails to provide blood samples under this section shall be guilty of a class C felony.]”

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2005.

(Approved June 8, 2005.)

Notes

- 1. So in original.
- 2. Should be “paragraph”.

ACT 113

H.B. NO. 1750

A Bill for an Act Making an Appropriation for Community-Based Reintegration Programs for Female Offenders Transitioning from Prison to the Community.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that, given the problems associated with re-entry to the community as well as the high rate of recidivism among former inmates, programs that effectively assist the transition of former inmates from prison to the community are critical. Once released from prison, a former inmate faces issues such as housing restrictions, workplace restrictions, as well as the many informal restrictions that result from prejudices against former offenders.

The legislature further finds that a person's stay in a jail or prison costs society from \$70 to \$400 per day, depending upon the level of security measures involved. These costs can be drastically reduced through the implementation of programs to assist in post-incarceration community integration.

In recent years, the number of incarcerated women has increased at an alarming rate. Nationally, women form 6.9 per cent of the prison population. In Hawaii, however, women constitute 11.99 per cent of the prison population. While the male prison population doubled between 1985 and 1995, the female population tripled, largely due to the incarceration of female nonviolent first-time drug offenders.

The department of public safety reports that the number of female parole violators rose thirty per cent between January 1, 2001, and January 19, 2004. The number of male parole violators rose 18.3 per cent during the same period.

Research indicates that a multitude of differing issues are associated with female versus male offenders. Women have different pathways to prison, which often involve unresolved sexual or physical trauma, or involvement in substance abuse that were, in many cases, attempts to self-medicate. In a majority of cases, female offenders are non-violent and do not pose a threat to the community. For female offenders who are incarcerated due to a drug addiction, incarceration is not an effective method for dealing with the addiction. To break the cycle of substance abuse, crime, and incarceration, the root problem must instead be addressed.

Currently, there is a lack of adequate programs or access to programs to assist female offenders in successfully transitioning back into the community. The great majority of female inmates will be released into the community without the skills and tools necessary for a successful transition.

The danger of female offenders becoming repeat offenders due to substance abuse presents huge economic and social costs to the public and the social service systems that are already grossly overtaxed. The majority of incarcerated female offenders are mothers of children under the age of eighteen, and problems stemming from the break up of the family often become intergenerational.

Transitional programs that help women leaving prison successfully reintegrate into the community have met with great success. TJ Mahoney & Associates offers a transitional program for female offenders re-entering the community. The department of public safety indicates that over a three-year period, sixty-eight per cent of women who have completed the TJ Mahoney & Associates program did not return to prison. In contrast, the most recent figures from the United States Bureau of Justice Statistics from 2002 indicate that of all prisoners released in 1994, sixty-seven and a half per cent were rearrested within three years of release. Community-based reintegration programs provide structure, monitoring, and accountability for female offenders returning to the community. They offer tools and a setting for practicing pro-social, responsible living while instilling values and beliefs that allow women to overcome obstacles while remaining clean and sober.

As of January 15, 2005, six hundred fifteen women were in the custody of the State. The State has currently contracted with the TJ Mahoney & Associates program for thirty-six community beds on Oahu. The need for more space to reach more female offenders is crucial.

The purpose of this Act is to appropriate funds to support community-based reintegration programs for female offenders transitioning from prison back into the community.

**SECTION 2.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2005-2006 to support community-based reintegration programs for female offenders transitioning from prison back into the community.

## ACT 114

The sum appropriated shall be expended by the department of public safety for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2005.

(Approved June 8, 2005.)

## ACT 114

S.B. NO. 817

A Bill for an Act Relating to the Employment Security Law.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 383-66, Hawaii Revised Statutes, is amended to read as follows:

**“§383-66 Contribution rates, how determined.** (a) The department, for the nine-month period April 1, 1941, to December 31, 1941, and for each calendar year thereafter, except as otherwise provided in this part, shall classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts with a view to fixing the contribution rates to reflect this experience. The department shall determine the contribution rate of each employer in accordance with the following requirements:

- (1) The standard rate of contributions payable by each employer for any calendar year through 1984 shall be three per cent. For the calendar year 1985 and thereafter, the standard rate of contributions payable by each employer shall be five and four-tenths per cent[-];
- (2) No employer's rate for the calendar year 1942 and for any calendar year thereafter shall be other than the maximum rate unless and until the employer's account has been chargeable with benefits throughout the thirty-six consecutive calendar month period ending on December 31 of the preceding calendar year, except that, for the calendar year 1956 and for each calendar year thereafter, an employer who has not been subject to the law for a sufficient period to meet this requirement may qualify for a rate other than the maximum rate if the employer's account has been chargeable throughout a lesser period but in no event less than the twelve consecutive calendar month period ending on December 31 of the preceding calendar year. For the calendar years 1985 through 1991, the contribution rate for a new or newly covered employer shall be the sum of the employer's basic contribution rate of three and six-tenths per cent and the fund solvency contribution rate determined for that year pursuant to section 383-68(a), until the employer's account has been chargeable with benefits throughout the twelve consecutive calendar month period ending on December 31 of the preceding calendar year; except that no employer's contribution rate shall be greater than five and four-tenths per cent and no employer with a negative reserve ratio shall have a contribution rate less than the employer's basic contribution rate. For calendar years 1992 and thereafter, the contribution rate for a new or newly covered employer shall be the contribution rate assigned to any employer with .0000 reserve ratio, until the employer's account has been chargeable with benefits throughout the twelve consecutive calendar month period ending on December 31 of the preceding calendar year[-];



- (3) Any amount credited to this State under section 903 of the Social Security Act, as amended, which has been appropriated for expenses of administration, whether or not withdrawn from the trust fund, shall be excluded from the fund for the purposes of this paragraph. Any advance that may be made to this State under section 1201 of the Social Security Act, whether or not withdrawn from this trust fund, shall be excluded from the fund for the purposes of this paragraph. No employer's rate shall be reduced in any amount [~~which~~] that is not allowable as an additional credit, against the tax levied by the federal Unemployment Tax Act pursuant to section 3302(b) of the federal Internal Revenue Code or pursuant to any other federal statute, successor to section 3302(b), which provides for the additional credit now provided for in section 3302(b)[.];
- (4) If, when any classification of employers is to be made (which may be after the commencement of the period for which the classification is to be made), the department finds that any employer has failed to file a report required in connection therewith or has filed a report that the department finds incorrect or insufficient, the department shall notify the employer thereof by mail addressed to the employer's last known address. Unless the employer files the report or a corrected or sufficient report, as the case may be, within fifteen days after the mailing of the notice, the maximum rate of contributions shall be payable by the employer for the period for which the contribution rate is to be fixed. Effective January 1, 1987, the director, for excusable failure, may redetermine the assignment of the maximum contribution rate in accordance with this section, provided the employer files all reports as required by the department and submits a written request for redetermination before December 31 of the year for which the contribution rate is to be fixed[.];
- (5) For the purpose of sections 383-63 to 383-69, if after December 31, 1939, any employing unit in any manner succeeds to or acquires the organization, trade, or business, or substantially all the assets thereof (whether or not the successor or acquiring unit was an "employing unit", as that term is defined in section 383-1 prior to the acquisition), or after December 31, 1988 and prior to December 31, 1992, acquires a clearly identifiable and segregable portion of the organization, trade, or business of another [~~which~~] that at the time of the acquisition was an employer subject to this chapter, and the successor continues or resumes the organization, trade, or business and continues to employ all or nearly all of the predecessor's employees, or the successor continues or resumes the clearly identifiable and segregable portion of the organization, trade, or business and continues to employ all or nearly all of the employees of the clearly identifiable and segregable portion, an application may be made for transfer of the predecessor's experience record. If the predecessor employer has submitted all information and reports required by the department including amended quarterly wage reports identifying the employees transferred or retained and executed and filed with the department before December 31 of the calendar year following the calendar year in which the acquisition occurred on a form approved by the department a waiver relinquishing the rights to all or the clearly identifiable and segregable portion of the predecessor's prior experience record with respect to its separate account, actual contribution payment, and benefit chargeability experience, annual payrolls and other data for the purpose of obtaining a reduced rate, and

requesting the department to permit the experience record to inure to the benefit of the successor employing unit upon request of the successor employing unit, the experience record for rate computation purposes of the predecessor shall thereupon be deemed the experience record of the successor and the experience record shall be transferred by the department to the successor employing unit and shall become the separate account of the employing unit as of the date of the acquisition. Benefits chargeable to the predecessor employer or successor employer in case of an acquisition of a clearly identifiable and segregable portion of the organization, trade, or business, after the date of acquisition on account of employment prior to the date of the acquisition shall be charged to the separate account of the successor employing unit. In case of an acquisition of a clearly identifiable and segregable portion of the organization, trade, or business, the experience record that inures to the benefit of the successor employer shall be determined as follows:

- (A) Wages, as used in section 383-61, attributable to the clearly identifiable and segregable portion shall be for the period beginning with the most recent three consecutive calendar years immediately preceding the determination of rates under ~~section~~ sections 383-63 to 383-69 and through the date of acquisition; and
- (B) Reserve balance attributable to the clearly identifiable and segregable portion shall be the amount determined by dividing the wages, as used in section 383-61, of the clearly identifiable and segregable portion in the three calendar years (or that lesser period as the clearly identifiable and segregable portion may have been in operation) immediately preceding the computation date of the rating period prior to which the acquisition occurred by the total taxable payrolls of the predecessor for the three-year period (or that lesser period as the clearly identifiable and segregable portion may have been in operation) and multiplying the quotient by the reserve balance of the predecessor employer calculated as of the acquisition date[-];

~~Provided~~ provided the waiver or waivers required herein are filed with the department within sixty days after the date of acquisition, the successor employing unit, unless already an employer subject to this chapter, shall be subject from the date of acquisition to the rate of contribution of the predecessor or of two or more predecessors if they have the same contribution rate. If there are two or more predecessors having different contribution rates, the successor shall be subject to the rate prescribed for new or newly covered employers under paragraph (2) until the next determination of rates under sections 383-63 to 383-69, at which time the experience records of the predecessors and successor shall be combined and shall be deemed to be the experience record of a single employing unit and the successor's rate shall thereupon be determined upon the basis of the combined experience. If the successor at the time of the transfer is an employer subject to this chapter, the rate of contribution to which the successor is then subject shall remain the same until the next determination of rates under sections 383-63 to 383-69, at which time the experience records of the predecessor and successor shall be combined and shall be deemed to be the experience record of a single employing unit and the successor's rate shall thereupon be determined upon the basis of the combined experience. For the purpose of determination of rates under sections 383-63 to 383-69 of all successor employing units, waivers as required herein, if not previously filed as hereinabove pro-

vided, shall be filed with the department not later than March 1 of the year for which the rate is determined; provided that no waiver shall be accepted by the department for filing unless the employing unit executing the waiver has filed all reports and paid all contributions required by this chapter[-];

- (6) The department may prescribe rules for the establishment, maintenance, and dissolution of joint accounts by two or more employers, and, in accordance with the rules and upon application by two or more employers to establish such an account, or to merge their several individual accounts in a joint account, shall maintain the joint account as if it constituted a single employer's account. The rules shall be consistent with the federal requirements for additional credit allowance in section 3303 of the federal Internal Revenue Code and consistent with this chapter[-];
- (7) Whenever there is an amendment to this chapter which, if immediately effective, would change an employer's rate of contributions, the rate of the employer shall be changed in accordance with the amendment and the new rate shall apply for the remainder of the calendar year beginning with the calendar quarter immediately following the effective date of the amendment providing for the change, unless otherwise provided by the amendment[-];
- (8) For the purposes of this section "contribution rate" shall mean the basic contribution rate as defined in section 383-68 when applied to calendar year 1978 or any calendar year thereafter[-]; and
- (9) For the purposes of this section, the terms "employing unit," "employer," "predecessor," and "successor" shall include both the singular and the plural of each term. Nothing in this section shall prevent two or more successor employing units, which each succeed to or acquire a clearly identifiable and segregable portion of a predecessor employing unit, from gaining the benefit of the clearly identifiable and segregable portion of the predecessor's experience record[-];

[Provided] provided that the terms of this section are complied with, nothing herein shall bar a predecessor employer from waiving the rights to all or the clearly identifiable and segregable portion of the predecessor's prior experience record in favor of a successor employer where the successor acquired a clearly identifiable and segregable portion of the predecessor's organization, trade, or business after December 31, 1988 and prior to December 31, 1992.

(b) Notwithstanding any other provision of this chapter, the following shall apply regarding assignment of rates and transfers of experience:

- (1) If an employing unit transfers its organization, trade, or business, or a portion thereof, to another employing unit and, at the time of the transfer, there is substantially common ownership, management, or control of the two employing units, both employing units shall file a notification of the transfer with the department on a form approved by the department within thirty days after the date of the transfer. The department shall transfer the experience records attributable to the transferred organization, trade, or business to the employing unit to whom the organization, trade, or business is transferred. The rates of both employing units shall be recalculated and made effective beginning with the calendar quarter immediately following the date of the transfer of the organization, trade, or business;
- (2) If a person is not an employing unit as defined in section 383-1 at the time it acquires the organization, trade, or business of another employing unit, both the person and the employing unit shall file a notification

of the acquisition with the department on a form approved by the department within thirty days after the date of the acquisition. If the department determines at the time of the acquisition or thereafter, based on objective factors that may include:

- (A) The cost of acquiring the organization, trade, or business;
  - (B) Whether the person continued the activity of the acquired organization, trade, or business;
  - (C) How long the organization, trade, or business was continued; or
  - (D) Whether a substantial number of new employees were hired for performance of duties unrelated to the organization, trade, or business activity conducted prior to the acquisition, that the acquisition was solely or primarily for the purpose of obtaining a lower rate of contribution, the person shall not be assigned the lower rate and shall be assigned the contribution rate for a new or newly covered employer pursuant to subsection (a)(2) instead;
- (3) An employing unit or person who is not an employing unit shall be subject to penalties under paragraph (4) or (5) if the employing unit or person who is not an employing unit:
- (A) Knowingly violates or attempts to violate this subsection or any other provision of this chapter related to determining the assignment of a contribution rate;
  - (B) Makes any false statement or representation or fails to disclose a material fact to the department in connection with the transfer or acquisition of an organization, trade, or business; or
  - (C) Knowingly advises another employing unit or person in a way that results in a violation or attempted violation of this subsection;
- (4) If the person is an employing unit:
- (A) The employing unit shall be subject to the highest rate assignable under this chapter for the calendar year during which the violation or attempted violation occurred and for the consecutive three calendar years immediately following; or
  - (B) If the employing unit is already at the highest rate or if the amount of increase in the employing unit's rate would be less than two per cent for the calendar year during which the violation or attempted violation occurred, a penalty equal to contributions of two per cent of taxable wages shall be imposed for the calendar year during which the violation or attempted violation occurred and the consecutive three calendar years immediately following. Any penalty amount collected in excess of the maximum contributions payable at the highest rate shall be deposited in the special unemployment insurance administration fund in accordance with section 383-127;
- (5) If the person is not an employing unit, the person shall be subject to a penalty of not more than \$5,000. The penalty shall be deposited in the special unemployment insurance administration fund in accordance with section 383-127;
- (6) For purposes of this subsection, the following definitions shall apply:
- (A) "Knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the requirements or prohibition involved;
  - (B) "Violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation, or wilful nondisclosure;

- (C) “Person” shall have the same meaning as defined in section 6601(a)(1) of the Internal Revenue Code of 1986, as amended; and
- (D) “Organization, trade, or business” shall include the employer’s workforce;
- (7) In addition to the civil penalties imposed by paragraphs (4) and (5), any violation of this section may be prosecuted under sections 383-142 and 383-143. No existing civil or criminal remedy for any wrongful action that is a violation of any statute or any rule of the department or the ordinance of any county shall be excluded or impaired by this section;
- (8) The department shall establish procedures to identify the transfer or acquisition of an employing unit for the purposes of this section; and
- (9) This section shall be interpreted and applied in a manner to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor.”

SECTION 2. Section 383-142, Hawaii Revised Statutes, is amended to read as follows:

**“§383-142 Employing units.** Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining a subject employer or to avoid or reduce any contribution or other payment required from an employing unit under this chapter or under the unemployment compensation law of any state or of the federal government, or who wilfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, or who wilfully fails to establish, maintain, or preserve records of all individuals in ~~his~~ the employer’s employ ~~which~~ that show the total amount of wages paid for each pay-period to each ~~such~~ individual while in ~~his~~ the employer’s employ, or who wilfully fails to establish, maintain, or preserve any other record, as required by this chapter or any rule or regulation adopted hereunder, shall be ~~fin~~ charged with a misdemeanor, and subject to a fine of not more than \$10,000; and each ~~ed not less than \$20 nor more than \$200, or imprisoned not more than sixty days, or both;~~ [such] false statement or representation or failure to disclose a material fact, or failure to establish, maintain, or preserve records, and each day of such a failure or refusal shall constitute a separate offense.”

SECTION 3. Section 383-143, Hawaii Revised Statutes, is amended to read as follows:

**“§383-143 General penalty.** Any person who wilfully violates this chapter or any order, rule, or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, and for which a penalty is neither prescribed in this chapter nor provided by any other applicable statute, shall be ~~fin~~ charged with a misdemeanor, and subject to a fine of not ~~ed not less than \$20 nor more than \$200, or imprisoned not more than sixty days, or both;~~ more than \$10,000; and each day [such] the violation continues shall be deemed to be a separate offense.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

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SECTION 5. This Act shall take effect upon its approval.

(Approved June 9, 2005.)

## ACT 115

S.B. NO. 122

A Bill for an Act Relating to Patient Safety.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Institute of Medicine estimated in 1999 that medical errors contribute to between forty-four thousand and ninety-eight thousand deaths per year in hospitals. "Peer review" was established as a mechanism to reduce medical errors by enabling medical staff to review cases and make necessary changes. It is critical that information obtained in peer review be protected from discovery in civil actions. Otherwise, participants may be reluctant to freely exchange information for fear of reprisal, thereby hampering improvements to the system.

Section 624-25.5, Hawaii Revised Statutes, protects the proceedings and the records of peer review committees and quality assurance committees from discovery. However, it does not effectively protect other information obtained in peer review from discovery.

The purpose of this Act is to support systemic improvements to the health care system that increase patient safety by including "case review forums" in the list of proceedings protected from discovery.

SECTION 2. Section 624-25.5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) As used in this section:

"Case review forum" means any meeting convened by the administrative or professional staff of a licensed hospital or clinic for the presentation and critique of cases for educational purposes.

"Health care review organization" means any organization that gathers and reviews information relating to the procedures and outcomes of health care providers and the care and treatment of patients for the purposes of evaluating and improving quality and efficiency of health care.

"Licensed health maintenance organization" means a health maintenance organization licensed in Hawaii under chapter 432D.

"Peer review committee" means a committee created by a professional society, or by the medical, dental, optometric, or administrative staff of a licensed hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network, whose function is to maintain the professional standards of persons engaged in its profession, occupation, specialty, or practice established by the bylaws of the society, hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network of the persons engaged in its profession or occupation, or area of specialty practice, or in its hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network.

"Preferred provider organization" or "preferred provider network" means a partnership, association, corporation, or other entity that delivers or arranges for the delivery of health services, and that has entered into a written service arrangement or arrangements with health professionals, a majority of whom are licensed to practice medicine or osteopathy.

“Professional society” or “society” means any association or other organization of persons engaged in the same profession, occupation, or a ~~[speciality]~~ specialty within a profession or occupation, a primary purpose of which is to maintain the professional standards of the persons engaged in its profession or occupation or specialty practice.

“Quality assurance committee” means an interdisciplinary committee established by the board of trustees or administrative staff of a licensed hospital, clinic, long-term care facility, skilled nursing facility, assisted living facility, home care agency, hospice, health maintenance organization, preferred provider organization, or preferred provider network providing medical, dental, or optometric care, whose function is to monitor and evaluate patient care, to identify, study, and correct deficiencies in the health care delivery system to reduce the risk of harm to patients and improve patient safety or otherwise improve the quality of care delivered to patients~~], and to convene meetings for the presentation and critique of cases for educational purposes].~~

(b) Neither the proceedings nor the records of peer review committees, ~~[or]~~ quality assurance committees, ~~or case review forums~~ shall be subject to discovery. For the purposes of this section, “records of quality assurance committees” are limited to recordings, transcripts, minutes, summaries, and reports of committee meetings and conclusions contained therein. Information protected shall not include incident reports, occurrence reports, or similar reports that state facts concerning a specific situation, or records made in the regular course of business by a hospital or other provider of health care. Original sources of information, documents, or records shall not be construed as being immune from discovery or use in any civil proceeding merely because they were presented to, or prepared at the direction of, the committees. Except as hereinafter provided, no person in attendance at a meeting of ~~[the]~~ a committee or case review forum shall be required to testify as to what transpired at the meeting. The prohibition relating to discovery or testimony shall not apply to the statements made by any person in attendance at the meeting who is a party to an action or proceeding the subject matter of which was reviewed at the meeting, or to any person requesting hospital staff privileges, or in any action against an insurance carrier alleging bad faith by the carrier in refusing to accept a settlement offer within the policy limits.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 9, 2005.)

## ACT 116

S.B. NO. 116

A Bill for an Act Relating to Nurses.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Hawaii’s registered nurse workforce is aging, and as an increasing number of registered nurses retire, the shortage of registered nurses worsens. The projected shortage for 2005 is one thousand five hundred eighteen

registered nurses, and this shortage is expected to grow to two thousand two hundred sixty-seven registered nurses by 2010.

However, Hawaii's nursing schools continue to turn away applicants primarily due to the lack of qualified faculty. This shortage is attributed to various factors, such as limited financial incentives to pursue a career in nursing education, a need to maintain one's income while pursuing a graduate degree, and significant tuition and loan expenses for students who pursue graduate studies in nursing. Increasing the number of qualified nursing school instructors is an essential step towards training the next generation of nurses and reversing the nursing shortage. It is necessary to increase the number of qualified nursing faculty to meet the demand for registered nurses in the next decade.

The legislature finds that the shortage of registered nurses threatens the health and welfare of Hawaii's residents. To meet the demand for registered nurses in the next decade, the legislature finds that it is necessary to increase the number of graduate students pursuing master's degrees and doctoral degrees in nursing so that they may become qualified nursing educators upon completion of their advanced degrees.

The purpose of this Act is to establish a program to encourage baccalaureate-prepared nurses to enroll in master's and doctoral programs that will prepare them for academic careers in nursing.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
NURSING SCHOLARS PROGRAM**

§ -1 **Definitions.** As used in this chapter, unless the context otherwise requires:

“Approved course of study” means a course of study that leads to enrollment in a graduate nursing program approved by the State board of nursing or a course of study in a graduate nursing program approved by the State board of nursing.

“Approved educational institution” means a public post-secondary educational institution located in this State that has been accredited by a nationally recognized accrediting agency that is listed by the United States Secretary of Education.

“Department” means the University of Hawaii.

“Program” means the nursing scholars program established under this chapter.

“Student” means any individual domiciled in this State who attends or is about to attend a post-secondary educational institution located in this State leading to a master's or doctoral degree in nursing and who intends to teach in a nursing program in Hawaii designed to prepare students for licensure as registered nurses.

“Work requirement” means teaching at a school of nursing located in Hawaii after receiving a master's degree or doctoral degree in nursing.

§ -2 **Nursing scholars program; establishment, administration.** (a) There is established a program to be known as the nursing scholars program to be placed within the department.

(b) The department may provide scholarship grants under the scholarship program to an eligible student who is a resident in this State upon confirmation from an approved educational institution that the student has been accepted for enrollment in an approved graduate course of study. Awarding preference shall be given to Hawaii residents. Scholarship grants shall only be for the amounts set forth in



section -3(a) and shall only be used for tuition, books, laboratory fees, and any other required educational fees and costs.

(c) The department shall establish lists of approved graduate courses of study for the various types of approved educational institutions falling within the program.

(d) To receive a scholarship grant under this chapter, a student shall:

- (1) Have graduated from a recognized nursing program with a bachelor of science in nursing;
- (2) Maintain domicile in Hawaii during the term of the scholarship grants;
- (3) Comply with any conditions placed on the scholarship grant by the department;
- (4) Maintain a grade point average of 3.0 or higher, on a scale of 4.0 or its equivalent; and
- (5) Enter into a written agreement with the department to:
  - (A) Satisfy all degree requirements and other requirements under this chapter;
  - (B) Commence nursing instruction in this State within one year after completion of an approved graduate degree in nursing for a period of one year for each academic year the student received a master's or doctoral degree, for a period of one year for each academic year the student receives a scholarship grant under this chapter, unless the department determines that there are extenuating circumstances; and
  - (C) Reimburse the State for all amounts received under this chapter and interest thereon, as determined by the department, if the student fails to comply with this subsection.

(e) A student applying for the scholarship shall apply to the department and include all information and documentation required by the department. The application shall include a verified statement of grade point average from the appropriate approved educational institution.

(f) The teaching requirement under subsection (d)(5)(B) shall begin after the receipt of the master's or doctoral degree. If a student terminates enrollment in the approved educational institution during the academic year or prior to completion of the approved graduate course of study and is eligible to have all or a portion of the tuition payments refunded under the refund policies of the institution, the approved educational institution shall notify the department in writing and shall return all unused portions of the scholarship grant. Returned amounts shall be used to fund other scholarship grants under this chapter.

(g) A scholarship grant under this chapter is only transferable to another approved educational institution if approved by the department.

(h) Scholarship grants awarded under the program shall be limited to funds appropriated for the purpose of awarding grants or funds otherwise matched by external entities. First priority for scholarship grant awards shall be given to renewal applicants.

**§ -3 Scholarships; nursing degree programs.** (a) The department shall award a scholarship grant in an amount up to \$10,000 per academic year to a student enrolled full-time in an approved educational institution pursuing a graduate degree in nursing through an approved course of study.

(b) The grant shall be for a maximum of three academic years if the student is enrolled in a master's degree program, or a maximum of four academic years if the student is enrolled in a doctoral program. To qualify for renewals beyond three years, the student shall comply with the requirements of section -2(d), and the department shall determine that the student is making satisfactory progress toward completing a master's or doctoral degree.

§ -4 **Program administration.** (a) The department shall monitor and verify a student's fulfillment of all requirements for a scholarship grant under this chapter.

(b) The department may enter into a contract with a private or public entity to administer the program.

(c) The department shall enforce repayment of all scholarship grants if a student does not comply with the requirements of the scholarship grant. Enforcement shall include the use of all lawful collection procedures, including private collection agencies.

(d) Scholarship grants received by a student under the program shall not be considered taxable income under chapter 235.

(e) Scholarship grants received by a student under the program shall not be considered financial assistance or appropriations to the approved educational institution.

(f) Any person who knowingly or intentionally procures, obtains, or aids another to procure or obtain a scholarship grant under the program through fraudulent means shall be disqualified from participation in the program and shall be liable to the department for an amount equal to three times the amount obtained.

§ -5 **Annual report.** The department shall publish a report by September 1, 2006, and every year thereafter. The report shall include information regarding the operation of the program, including:

- (1) The total number of students receiving nursing scholarship grants;
- (2) The total amount of scholarship grants awarded;
- (3) The number of full-time and part-time graduate students receiving scholarship grants, reported according to institution of enrollment;
- (4) The amount of scholarship grants awarded to graduate students, reported according to institution of enrollment; and
- (5) The total number of graduate students who withdraw from the program.

(b) The annual report shall be submitted to the governor and the legislature no later than twenty days prior to the convening of each regular session."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$20,000, or so much thereof as may be necessary for fiscal year 2005-2006, for the purposes of this Act.

The sum appropriated shall be expended by the University of Hawaii for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 2005.

(Approved June 9, 2005.)

A Bill for an Act Establishing a Commission to Recognize and Honor Senator Hiram L. Fong.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that Senator Hiram L. Fong provided over thirty years of outstanding public service. He began his career in public service at the age of thirty-one, by serving from 1938 to 1954 in Hawaii's territorial house of representatives. Early on, Senator Hiram L. Fong showed his ability to work well

with both Democrats and Republicans as he forged a coalition of independents from both parties and was elected as the speaker of the house of representatives during his first term. He went on to serve seventeen years in the United States Senate, where he was the first Asian-American senator. When Senator Hiram L. Fong left politics, he focused on building a financial empire based on real estate, insurance, and financing. After a long and distinguished career as a public servant and businessman, Senator Hiram L. Fong died in 2004 at the age of ninety-seven.

The purpose of this Act is to establish a commission to recognize and honor Senator Hiram L. Fong.

SECTION 2. There is established a temporary commission to be known as the Senator Hiram L. Fong commission, which shall have charge of all arrangements for recognizing and honoring Senator Hiram L. Fong. The commission shall be placed within the office of the governor for administrative purposes and shall cease to exist after December 31, 2009.

SECTION 3. The commission shall consist of eleven members to be appointed, without regard to section 26-34, Hawaii Revised Statutes, as follows:

- (1) Three by the speaker of the house of representatives;
- (2) Three by the president of the senate;
- (3) Three by the governor;
- (4) One by the mayor of the city and county of Honolulu; and
- (5) One by the Honolulu city council.

The commission members shall include a member from the family of Senator Hiram L. Fong, the Chinese-American community, the business community, the labor unions, and the University of Hawaii. The speaker of the house of representatives and the president of the senate shall, by mutual agreement, designate a chair pro tem from among the appointed members. A majority of the members shall constitute a quorum. An individual appointed to another commission may be eligible to be appointed as a member of this commission.

The members shall not receive compensation for their services but shall be reimbursed for necessary expenses, including travel expenses, incurred in the performance of their duties under this Act.

Any member of the commission shall be immune from civil liability, as provided for under section 26-35.5, Hawaii Revised Statutes.

SECTION 4. The commission shall research and recommend how the State can honor Senator Hiram L. Fong and shall submit to the legislature, no later than sixty days prior to the convening of the regular session of 2006, a written report of its recommendations, including the following:

- (1) Developing a detailed plan on how to execute its recommendations;
- (2) Identifying a nonprofit organization that will be responsible for any moneys received or expended for honoring Senator Hiram L. Fong;
- (3) Identifying and recommending procedures for the appropriate disbursement of any public funds received by the nonprofit organization; and
- (4) Developing, planning, and coordinating the various program activities that are to be scheduled to honor Senator Hiram L. Fong.

In fulfilling its responsibilities, the commission shall consult, cooperate with, and seek advice from appropriate organizations and agencies. The department of accounting and general services shall assist the commission.

SECTION 5. The commission may seek grants from public and private sources and may accept donations to finance the projects, programs, and activities of the commission. Any such funds received by the commission shall be turned over to

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the nonprofit organization responsible for any moneys received or expended for honoring Senator Hiram L. Fong.

All property acquired by the commission shall be deposited for preservation in the Hawaii state public library system, museums, and public archives or shall otherwise be disposed of as directed by the commission.

SECTION 6. At the end of its term, the commission shall submit to the governor a final report of all its activities, including an accounting of all moneys received and disbursed. The report shall include, as applicable, a description of:

- (1) The production, publication, and distribution of books, films, and other educational materials on the life and experiences of Senator Hiram L. Fong;
- (2) Conferences, conventions, lectures, and seminars on the life and experiences of Senator Hiram L. Fong; and
- (3) Traveling exhibits, other exhibits, ceremonies, theatrical productions, and other special events honoring Senator Hiram L. Fong.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,000 or so much thereof as may be necessary for fiscal year 2005-2006 to be used by the Senator Hiram L. Fong commission for the purposes of this Act and in accordance with chapter 42F, Hawaii Revised Statutes.

The sum appropriated shall be expended by the governor for the purposes of this Act.

SECTION 8. This Act shall take effect on July 1, 2005.

(Approved June 13, 2005.)

## ACT 118

S.B. NO. 1872

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Palolo Chinese Home and its Subsidiaries.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 2. Pursuant to part II, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$40,000,000, in one or more series, for the purpose of assisting Palolo Chinese Home, a Hawaii not-for-profit corporation, and its not-for-profit subsidiaries, to finance the expansion, construction, and rebuilding of its health care facilities. The legislature hereby finds and determines that the activities and facilities of Palolo Chinese Home constitute a project as defined in part II, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to a not-for-profit corporation that provides health care facilities to the general public.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part II, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose

revenue bonds to assist not-for-profit corporations that provide health care facilities to the general public.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2010, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2010.

SECTION 6. This Act shall take effect on July 1, 2005.

(Approved June 13, 2005.)

## ACT 119

H.B. NO. 1236

A Bill for an Act Relating to the Legislature.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act implements the recommendation of the 2002 legislative salary commission in its report to the legislature and governor, that “the non-salary components of compensation for legislators ... be reviewed by the agencies/entities, which can effectuate changes to those items as appropriate.”

Article III, section 9 of the Hawaii Constitution provides: “The members of the legislature shall receive allowances reasonably related to expenses as provided by law[.]”

Each member of the legislature receives an allowance that, in 1987, was statutorily set at \$5,000. Expenditure of the allowance is strictly limited to incidental expenses connected with legislative duties, and legislators must account in writing to their respective house for each expenditure before funds are disbursed.

Legislators use the allowance to cover a wide range of costs related to the many duties and obligations of their office. The allowance is sometimes used to cover the costs of conferences, meetings, and other functions when these are a necessary part of the costs of performing official duties and representational activities. It may also be expended on equipment and other non-perishable items, which are used by the legislator during the legislator’s term of office, but are inventoried and retained as the property of the house or senate.

The most important function of the allowance, however, is to allow legislators to communicate with their constituents. The legislative allowance is primarily used by legislators to send constituents informational or survey material. It thus keeps constituents and legislators informed about the issues, helps legislators to identify and resolve constituent concerns, and allows legislators to support the preferences of their constituents in the legislative process. The legislative allowance

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permits legislators to maintain communication with their constituents, which is the foundation of our representative form of government.

The legislative allowance was last increased seventeen years ago, in 1987. Since then, inflation has significantly eroded its buying power and thus a legislator's ability to communicate with and represent the legislator's constituents.

According to the federal Department of Labor consumer price index inflation calculator, \$100 in 1987 had the same buying power as \$168.05 in 2004—an increase in price due to inflation of over sixty per cent. Had the legislative allowance kept pace with inflation, it should have been set at \$8,400 in 2004.

The purpose of this Act, which implements the recommendation of the 2002 legislative salary commission, is to support communication between legislators and their constituents, which is fundamental to our representative form of government.

This Act:

- (1) Increases the legislative allowance by fifty per cent, from \$5,000 to \$7,500, to adjust for inflation; and
- (2) Provides a mechanism by which the allowance may be regularly adjusted to account for increases in the price of goods and services.

SECTION 2. Section 24-1, Hawaii Revised Statutes, is amended to read as follows:

**“§24-1 Allowance for incidental expenses.** Each member of the legislature shall receive an annual allowance of [~~\$5,000,~~] \$7,500, which amount is to cover incidental expenses connected with legislative duties and the amount shall be payable in a manner prescribed by the respective rules of each house[-]; provided that when the legislative salary is increased, the legislative allowance shall be increased by the same percentage.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on January 18, 2006.

(Approved June 13, 2005.)

## ACT 120

S.B. NO. 797

A Bill for an Act Relating to the Housing and Community Development Corporation of Hawaii.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to make technical, housekeeping amendments to the laws relating to the operations of the housing and community development corporation of Hawaii.

SECTION 2. Section 201G-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Public housing project” or “complex” means a housing project directly controlled, owned, developed, or managed by the corporation pursuant to part II, except for subparts F and G.”

SECTION 3. Section 201G-31, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“‘Public housing project’ or ‘complex’ means a housing project directly controlled, owned, developed, or managed by the corporation pursuant to part II, except for subparts F and G.’”

SECTION 4. Section 201G-41, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“‘Public housing project’ or ‘complex’ means a housing project directly controlled, owned, developed, or managed by the corporation pursuant to part II, except for subparts F and G.’”

SECTION 5. Section 201G-71, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“‘Public housing project’ or ‘complex’ means a housing project directly controlled, owned, developed, or managed by the corporation pursuant to part II, except for subparts F and G.’”

SECTION 6. Section 201G-32, Hawaii Revised Statutes, is amended to read as follows:

**“[H]§201G-32[ ] Rentals and tenant selection.** (a) In the operation or management of a public housing [~~projects,~~] project, the corporation (acting directly or by an agent or agents) shall at all times, observe the following duties with respect to rentals and tenant selections:

- (1) It may establish maximum limits of annual net income for tenant selection in any public housing project, less such exemptions as may be authorized by federal regulations pertaining to public housing. The corporation may agree to conditions as to tenant eligibility or preference required by the federal government pursuant to federal law in any contract for financial assistance with the corporation;
- (2) It may rent or lease the dwelling accommodations therein only at rentals within the financial reach of persons who lack the amount of income which it determines to be necessary in order to obtain safe, sanitary, and uncongested dwelling accommodations within the area of operation of the corporation and to provide an adequate standard of living; and
- (3) It may rent or lease to a tenant a dwelling consisting of the number of rooms (but no greater number) which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding.

(b) Nothing in this part shall be construed as limiting the power of the corporation:

- (1) To vest in an obligee the right, in the event of a default by the corporation, to take possession of a public housing project or cause the appointment of a receiver thereof, free from all the restrictions imposed by this part with respect to rentals, tenant selection, manner of operation, or otherwise; or
- (2) To vest in obligees the right, in the event of a default by the corporation, to acquire title to a public housing project [~~or the property~~] mortgaged by the corporation, free from all the restrictions imposed by this part, except those imposed by section 201G-168.’”

SECTION 7. Section 201G-41, Hawaii Revised Statutes, is amended by amending the definition of “administer” or “administration” to read as follows:

““Administer” or “administration” means the management, operation, maintenance, and regulation of any public housing project, and includes the leasing of any public housing project, in whole or in part, from the federal government, management and operation of any public housing project under a contract with or permit from the federal government, fixing of rentals, selection of tenants, rental of living quarters and accommodations, rental or leasing of commercial structures and spaces, and providing of recreational and other facilities. It also includes any and all undertakings necessary therefor.”

SECTION 8. Section 201G-42, Hawaii Revised Statutes, is amended to read as follows:

“**§201G-42 Housing, tenant selection.** Subject to the following limitations and preferences, the corporation shall select tenants upon the basis of those in greatest need for such housing. The corporation may limit the tenants of any public housing project to classes of persons when required by federal law or regulation as a term or condition of obtaining assistance from the federal government. Within the priorities established by the corporation recognizing need, veterans with a permanent disability of ten per cent or more as certified by the [~~Veterans Administration,~~] United States Department of Veterans’ Affairs, the dependent parents of the veteran and the deceased veteran’s widow shall be given first preference.”

SECTION 9. Section 201G-43, Hawaii Revised Statutes, is amended to read as follows:

“**§201G-43 Rentals.** (a) Notwithstanding any provision of law to the contrary, the corporation shall fix the rates of the rentals for dwelling accommodations and other facilities in the public housing [~~projects~~] project or complex provided for by this subpart, at rates that will produce revenues that will be sufficient to pay all expenses of management, operation, and maintenance, including the cost of insurance, a proportionate share of the administrative expenses of the corporation to be fixed by it, and the costs of repairs, equipment, and improvements, to the end that the public housing [~~projects~~] project or complex shall be and always remain self-supporting. The corporation, in its discretion, may fix the rates in such amounts as will produce additional revenues (in addition to the foregoing) sufficient to amortize the cost of the public housing project or [~~projects,~~] complex, including equipment, over a period or periods of time that the corporation may deem advisable.

(b) Notwithstanding any provision of law to the contrary, if any such public housing project or [~~projects have~~] complex has been specified in any resolution of issuance adopted pursuant to part III, or if the income or revenues from any such public housing project or [~~projects~~] complex have been pledged by the corporation to the payment of any bonds issued under part III, or if any of the property of any such public housing project or [~~projects~~] complex is security for any such bonds, the corporation shall fix the rates of the rentals for dwelling accommodations and other facilities in the public housing project or [~~projects~~] complex so specified or encumbered at increased rates that will produce the revenues required by subsection (a) and, in addition, those amounts that may be required by part III, by any resolution of issuance adopted under part III and by any bonds or mortgage or other security issued or given under part III.”



SECTION 10. Section 201G-44, Hawaii Revised Statutes, is amended to read as follows:

**“§201G-44 Administration of state [~~low income~~] low-income public housing projects and programs.** (a) The corporation may construct, develop, and administer property or housing for the purpose of state [~~low income~~] low-income public housing projects and programs.

(b) The corporation shall adopt necessary rules in accordance with chapter 91, including the establishment and collection of reasonable fees for administering the public housing projects or programs and to carry out any state program under [{}subsection{}] (a).”

SECTION 11. Section 201G-45, Hawaii Revised Statutes, is amended to read as follows:

**“§201G-45 [{}State [~~low income~~] low-income housing revolving fund.{}]** The director of finance shall establish a revolving fund to be known as “the state [~~low income~~] low-income housing revolving fund”. Notwithstanding any law to the contrary, moneys received by the corporation under or pursuant to this subpart, including refunds, reimbursements, rentals, fees, and charges received from tenants, shall be deposited in the state [~~low income~~] low-income housing revolving fund. Except as otherwise provided in this chapter, the state [~~low income~~] low-income housing revolving fund may be expended by the corporation for any and all of the purposes of this subpart, including, without prejudice to the generality of the foregoing, the expenses of management, operation, and maintenance of state [~~low income~~] low-income housing, including but not limited to the cost of insurance, a proportionate share of the administrative expenses of the corporation, and the cost of repairs, equipment, and improvement; the acquisition, clearance, and improvement of property; the construction and reconstruction of building sites; the construction, reconstruction, repair, remodeling, extension, equipment, and furnishing of any public housing project; the development and administration of any public housing project; the payment of rentals; and administration and other expenses.”

SECTION 12. Section 201G-47, Hawaii Revised Statutes, is amended to read as follows:

**“§201G-47 Housing, government aid, political subdivisions.** Any political subdivision may appropriate money for the purposes of meeting any local participation in housing costs or expenses required in order to obtain assistance from the federal government in the development and administration of public housing projects and programs under this subpart, or of providing funds for use by the corporation in developing and administering public housing projects.”

SECTION 13. Section 201G-51, Hawaii Revised Statutes, is amended by amending the definition of “public housing project” to read as follows:

““Public housing project” or “complex” means a housing project directly controlled, owned, developed, or managed by the corporation pursuant to [subparts A, B, and H-] part II, except for subparts F and G.”

SECTION 14. Section 201G-71, Hawaii Revised Statutes, is amended by amending the definition of “tenant” to read as follows:

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““Tenant” includes any person occupying a room, dwelling accommodation, living quarters, or space in any public housing project[,] or complex, under or by virtue of any tenancy, lease, license, or permit under or from the corporation.”

SECTION 15. Section 201G-72, Hawaii Revised Statutes, is amended to read as follows:

“[H]§201G-72[H] **Lien on personalty for rent, etc.** The corporation shall have a statutory lien on all personal property, not exempt from execution, belonging to, or in the lawful possession of, every tenant while the personal property is in or upon any public housing project, for the amount of its proper charges against the tenant for rent of a room, dwelling accommodation, living quarters, or space in the public housing project, or for utilities, facilities, or services in the public housing project. The lien shall commence with the tenancy or occupancy of the tenant and continue for one year after the charge or charges are due and owing to the corporation. Whenever any tenant fails or refuses to pay the charge or charges after the same are so due and owing, the corporation shall have the right and power, acting by its authorized agents or representatives, without process of law and without any liability for the taking, seizure, and retention of the personal property, to take and seize any of the personal property belonging to, or in the lawful possession of, the tenant which is found in or upon the public housing project, and to hold and retain the same, as security for the payment of the charge or charges, until the amount of the charge or charges is paid and discharged. If the charge or charges, so due and owing, are not paid and discharged within thirty days after the taking and seizure, the corporation may sell the personal property in the manner provided in section 201G-73.”

SECTION 16. Section 201G-76, Hawaii Revised Statutes, is amended to read as follows:

“§201G-76 **Lien on abandoned personalty, sale, etc.** Whenever the corporation has in its possession for four months after the termination of any residence or occupancy herein mentioned any personal property that has been left in or about any public housing project by any person who formerly resided in, or occupied a room, dwelling accommodation, living quarters, or space in the public housing project, the corporation may sell the same at public auction and apply the proceeds thereof to the payment of its charges for storage of the personal property, and for public notice and sale, and to the payment of other amounts, if any, then due and owing to it from the former resident or occupant for rent or for any utility or service. Before any sale is made, the corporation shall first give public notice of the time and place of sale at least two times in the county in which the personal property is located. The notice shall contain a brief description of the property; the name, if known, of the former resident or occupant who so left the property in or about the public housing project; the amount of the charges for storage, if any, and the indebtedness, if any; and the time and place of the sale. The charges for storage, if any, and for notice and sale, and the indebtedness, if any, shall be a lien upon the personal property. Notices of several sales may be combined and given in one notice, and whenever so combined and given the expenses of notice and sale shall be a lien and shall be satisfied in ratable proportion according to the amount received for each lot of property so noticed for sale.”

SECTION 17. Section 201G-78, Hawaii Revised Statutes, is amended to read as follows:

“[E]§201G-78[E] **Lien attaches to personalty in possession.** Sections 201G-76 and 201G-77 shall also apply to any personal property which, before May

2, 1949, was left in or about any public housing project, and was taken into the possession of the corporation, as herein set forth and provided.”

SECTION 18. Section 201G-92, Hawaii Revised Statutes, is amended to read as follows:

**“§201G-92 Facilities and services by counties to corporation and tenants.** Each county within which the corporation may own, operate, or administer any public housing project or [~~projects~~] complex under any law or laws, and to which, or for whose benefit, the corporation has made (by payment to the county) or may hereafter make, gifts or donations, including any payment in lieu of taxes, shall, upon request of the corporation, provide and furnish to the corporation, in regard to every such public housing project or [~~projects~~] complex within the county, and to the tenants and other occupants of the same, free of charge and without condition or other requirement, all the facilities, services, and privileges as it provides or furnishes, with or without charge or other consideration, to any person or persons whomsoever, including, without limitation to the generality of the foregoing, police protection, fire protection, street lighting, or paving maintenance, traffic control, garbage or trash collection and disposal, use of streets or highways, use of county incinerators or garbage dumps, storm drainage, and sewage disposal. In addition, each county, upon request of the corporation and free of charge and without condition or other requirement, shall open or close, but not construct or reconstruct, streets, roads, highways, alleys, or other facilities within any public housing project or [~~projects~~] complex within the county. Nothing in this section shall be construed to restrict or limit the power of the corporation to agree to pay, or to pay, for any and all of the facilities, services, and privileges, if in its discretion it deems such payment advisable.”

SECTION 19. Section 201G-94, Hawaii Revised Statutes, is amended to read as follows:

**“[~~§~~201G-94[~~]~~] Charges for prior services by counties to corporation.** Every county (including departments, boards, or instrumentalities thereof) which has, prior to May 14, 1949, provided or furnished any facilities, services, or privileges, including, without limitation to the generality of the foregoing, garbage and trash collection and disposal, use of streets or highways, and use of county incinerators or garbage dumps, to the corporation in regard to any public housing project or [~~projects~~] complex owned, operated, or administered by the corporation under any law or laws, or to the tenants or occupants of [~~any such~~] the public housing project or [~~projects,~~] complex, for which facilities, services, or privileges the corporation, or the tenants or occupants have not paid, is prohibited from charging, collecting, or receiving any privileges, except such sum or sums as the corporation, in its discretion, may hereafter agree to pay for the same.”

SECTION 20. Section 201G-95, Hawaii Revised Statutes, is amended to read as follows:

**“[~~§~~201G-95[~~]~~] Garbage, trash disposal.** Every county [~~which~~] that maintains or operates any garbage or trash collection and disposal service shall, free of charge, collect[;] and dispose of garbage and trash at and from any public housing project or [~~projects,~~] complex located within a county, which is owned, operated, or administered by the corporation. Upon request of the corporation, each county shall allow the corporation to establish, maintain, or operate its own garbage and trash collection and disposal service for any or all public housing project or [~~projects~~] complex located within the county, and[;] in regard to such service, shall allow the

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corporation to use, free of charge, all incinerators, garbage dumps, and other facilities that the county may own, control, or operate.

Nothing in this section shall prohibit or prevent the corporation from paying, and any such county from receiving, any sum or sums which the corporation in its discretion may agree to pay as reasonable compensation for the services or facilities provided by any county pursuant to this section.”

SECTION 21. Section 201G-96, Hawaii Revised Statutes, is amended to read as follows:

“~~[§201G-96]~~ **Furnishing of free water not required.** Sections 201G-92 to 201G-95 shall not be construed to require the furnishing of any free water to the corporation or to the tenants or occupants of any public housing ~~[projects]~~ project or complex owned, operated, or administered by the corporation.”

SECTION 22. Section 201G-98, Hawaii Revised Statutes, is amended to read as follows:

“~~[§201G-98]~~ **Regulation of traffic within public housing projects in city and county of Honolulu.** Any law to the contrary notwithstanding, the city council of the city and county of Honolulu may regulate traffic within the various public housing projects of the corporation in the city and county of Honolulu by ordinance.”

SECTION 23. Section 201G-99, Hawaii Revised Statutes, is amended to read as follows:

“~~[§201G-99]~~ **Regulation of traffic within public housing projects in other counties.** Any law to the contrary notwithstanding, the county councils of the counties of Hawaii, Maui, and Kauai may regulate traffic within the various public housing projects of the corporation within their respective counties by ordinance as provided by law.”

SECTION 24. Section 201G-100, Hawaii Revised Statutes, is amended to read as follows:

“~~[§201G-100]~~ **Regulations, effective when.** No ordinance or laws enacted by the council of any county regulating traffic within the public housing projects of the corporation within the county~~;~~ shall be valid or effective~~;~~ unless prior thereto, the corporation has entered into a written contract with the county absolving the county from any and all responsibility or liability for the construction, maintenance, and repair of any streets, lanes, alleys, or highways or street markers, traffic signs, or signal devices within the projects of the corporation.”

SECTION 25. Section 201G-152, Hawaii Revised Statutes, is amended to read as follows:

“**§201G-152 Resident selection~~;~~; dwelling accommodations; rentals.**  
(a) In the administration of elder or elderly public housing, the corporation shall observe the following with regard to resident selection, dwelling accommodations, and rentals:

- (1) Except as hereinafter provided, it shall accept only elder or elderly households as residents in the elder or elderly public housing projects;

- (2) It may accept as residents in any housing unit one or more persons, related or unrelated by marriage. It may also accept as a resident in any dwelling accommodation or in any elder or elderly public housing project, in the case of illness or other disability of an elder who is a resident in the dwelling accommodation or in the elder or elderly public housing project, a person designated by the elder as the elder's live-in aide whose qualifications as a live-in aide are verified by the corporation, although the person is not an elder; provided that the person shall cease to be a resident therein upon the recovery of, or removal from the elder or elderly public housing project of, the elder;
- (3) It may rent or lease to an elder a dwelling accommodation consisting of any number of rooms as the corporation deems necessary or advisable to provide safe and sanitary accommodations to the proposed resident or residents thereof without overcrowding; and
- (4) Notwithstanding that the elder has no written rental agreement or that it has expired, so long as the elder continues to tender the usual rent to the corporation or proceeds to tender receipts for rent lawfully withheld, no action or proceeding to recover possession of the dwelling unit may be maintained against the elder, nor shall the corporation otherwise cause the elder to quit the dwelling unit involuntarily, demand an increase in rent from the elder, or decrease the services to which the elder has been entitled during hospitalization of the elder due to illness or other disability.

(b) For purposes of this section, "public housing project" or "complex" means a housing project directly controlled, owned, developed, or managed by the corporation pursuant to part II, except for subparts F and G."

SECTION 26. Section 201G-391, Hawaii Revised Statutes, is amended to read as follows:

**"§201G-391 State sales housing.** Notwithstanding any law to the contrary, but subject to ~~[any resolution of issuance under subpart A,]~~ the sales provisions of sections 201G-125 through 201G-130, the corporation may permit any qualified member of a tenant family of a public housing project [administered under subpart A, B, or H of part II], or any qualified individual meeting the income standards under section 221(d)(3) of the National Housing Act to enter into a contract for the acquisition of a dwelling unit and lot or the acquisition of a dwelling unit and the lease of its lot, the lease to conform to chapter 171 with the exception that the lease shall not require bid, auction, or negotiation, in any public housing project [under subparts A, B, and H of part II] which is suitable for sale and for occupancy by such purchaser or a member or members of the purchaser's family~~[, upon the following terms:~~

- (1) ~~The purchaser shall pay at least:~~
  - (A) ~~A pro rata share cost of any services furnished the purchaser by the corporation, including but not limited to administration, maintenance, repairs, utilities, insurance, provision of reserves, and other expenses;~~
  - (B) ~~Taxes on the purchaser's dwelling unit; and~~
  - (C) ~~Monthly payments of interest and principal sufficient to amortize a sales price, equal to the greater of the unamortized debt or the appraised value (at the time such purchase contract is entered into) of the dwelling unit, in not more than forty years;~~
- (2) ~~The interest rate shall be fixed at not less than the average interest cost of loans outstanding on the project, except that in the case of a project~~

on which bonds are not outstanding the interest rate shall be fixed at not less than the going rate applicable to that project;

- (3) ~~The principal payments shall be not less than one-half of one per cent a year of the sales price during the first five years after purchase, one per cent a year during the next five years, one and one-half per cent a year during the third five years, and thereafter not less than the principal payments resulting from a level debt service of interest and principal over the balance of the payment period; and~~
- (4) ~~If at any time:~~
  - (A) ~~A purchaser fails to carry out the purchaser's contract with the corporation and if no member of the purchaser's family who resides in the dwelling assumes such contract; or~~
  - (B) ~~The purchaser or a member of the purchaser's family who assumes the contract does not reside in the dwelling, the corporation shall have an option to acquire the purchaser's interest under the contract upon payment to the purchaser or the purchaser's estate of an amount equal to the purchaser's aggregate principal payments plus the value to the corporation of any improvements made by the purchaser, less an amount equal to two and one-half per cent of the sales price].'~~

SECTION 27. Section 201G-31, Hawaii Revised Statutes, is amended by repealing the definition of "housing project" or "project".

~~[ " "Housing project" or "project" includes any housing project or projects as defined in part I which is acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking:~~

- ~~(1) To demolish, clear, remove, alter, or repair unsanitary or unsafe housing;~~
- ~~(2) To provide safe and sanitary dwelling accommodations; or~~
- ~~(3) To do both. '']~~

SECTION 28. Section 201G-71, Hawaii Revised Statutes, is amended by repealing the definition of "housing project."

~~[ " "Housing project" means and includes any housing project or projects owned, managed, administered, or operated by the corporation under or pursuant to subparts A and B or under or pursuant to any other law. '']~~

SECTION 29. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 30. This Act shall take effect upon its approval.

(Approved June 14, 2005.)

A Bill for an Act Relating to Dentists.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 448-9, Hawaii Revised Statutes, is amended to read as follows:

~~“§448-9 Application for [examination for graduates of dental colleges accredited by the American Dental Association Commission on Dental Accreditation.] licensure. Any person of eighteen years or more shall be eligible [to take an examination before the board] for licensure upon submission of:~~

- (1) An application ~~[on a form prescribed by the board]~~ to the executive ~~[secretary]~~ officer of the board not later than ~~[sixty]~~ forty-five days prior to the date of the scheduled examination;
- (2) Application and examination fees; and
- (3) Documentation and credentials that shall include but are not limited to the following:
  - (A) A diploma or certificate of graduation from a dental college accredited by the American Dental Association Commission on Dental Accreditation, recognized and approved by the board; and
  - (B) A certificate or other evidence satisfactory to the board of having passed parts I and II of the National Board Dental Examination.”

SECTION 2. Section 448-10, Hawaii Revised Statutes, is amended to read as follows:

~~“§448-10 Examination; time. [The] (a) Except as provided in subsection (c), the board shall require all applicants to take the state written and practical examination on dentistry. In administering the examination the State shall consider current trends in dental education. The requirements for the examination in operative and laboratory dentistry shall be decided by the board and mailed to each applicant. All instruments, materials, and patients shall be supplied by the applicant. Two examinations shall be held each calendar year.~~

~~[If the board is unable to administer an examination, a qualified applicant for the canceled board examination shall meet the board’s examination requirement if the applicant:~~

- (1) ~~Within one year prior to the canceled board examination passed a regional or state examination satisfactory to the board; or~~
- (2) ~~Prior to the board’s next administered examination takes and passes a regional or state examination satisfactory to the board.]~~
- (b) ~~Until December 31, 2005, the board without regard to chapter 91 may develop a state written and practical examination on dentistry for the purposes of subsection (a).~~

~~(c) If the board determines that two state written and practical examinations on dentistry will not be or have not been administered pursuant to subsection (a) during the calendar year, an applicant shall be eligible for licensure under this chapter:~~

- (1) ~~If the applicant takes one of the following four regional examinations given between February 1, 2004 and the date of availability of the American Board of Dental Examiners (ADEX) examination, by:~~
  - (A) ~~The Western Regional Examining Board;~~
  - (B) ~~The Central Regional Dental Testing Service, Inc.;~~
  - (C) ~~The Southern Regional Testing Agency, Inc.;~~ or
  - (D) ~~The North East Regional Board of Dental Examiners, and passes it;~~
- (2) ~~If the applicant takes and passes the American Board of Dental Examiners (ADEX) examination approved by the board; or~~
- (3) ~~By credential under this paragraph if the applicant is a dental specialist and:~~
  - (A) ~~Has graduated from an accredited dental specialty education program in orthodontics, endodontics, pedodontics, periodontics,~~

- oral surgery, oral radiology, public health dentistry, or oral medicine/oral pathology;
- (B) Submits to the board a completed application and all required fees;
  - (C) Submits to the board verification of:
    - (i) Graduation from a general dental education program accredited by the American Dental Association Commission on Dental Accreditation or the Commission on Dental Accreditation of Canada;
    - (ii) Graduation from a post-graduate specialty program accredited by the Commission on Dental Accreditation of the American Dental Association;
    - (iii) A current active license issued by another state that is not revoked, suspended, or otherwise restricted;
    - (iv) Having been lawfully engaged in the practice of dentistry for at least three years preceding the date of the application, with a minimum of one thousand hours of dentistry practice each year;
    - (v) Completion of a minimum of thirty-two hours of continuing education in the applicant's dental specialty within the preceding two-year period;
    - (vi) Not having been subject to disciplinary action by any jurisdiction in which the applicant is or has been previously licensed to practice dentistry; provided that if the applicant has been subject to disciplinary action, the board shall review that action to determine if it warrants refusal to issue a license to the applicant;
    - (vii) Not having any felony convictions of any kind and having no other criminal convictions that may affect the applicant's ability to render competent dental care;
    - (viii) Registration status with the federal Drug Enforcement Administration and submits a self-query report from the National Practitioner Data Bank; provided that the board shall review this information to determine if it warrants refusal to issue a license to the applicant; and
    - (ix) Passage of parts I and II of the National Board Dental Examination; and
  - (D) Agrees to practice only as a dental specialist, within the area of the applicant's specialization."

SECTION 3. Chapter 448, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§448- American Board of Dental Examiners (ADEX) examination; regional examinations.** (a) Once the American Board of Dental Examiners (ADEX) examination is available and approved by the board, an applicant shall take and pass the ADEX examination, and neither the state examination nor any regional examination shall be accepted; provided that an applicant who has taken a regional examination after February 1, 2004, but prior to the availability of the ADEX examination shall be deemed to have met the board's examination requirement if the applicant passes the exam."

SECTION 4. The board of dental examiners shall make a determination and post notification on its webpage by July 15, 2005, regarding whether the two state



written and practical examinations on dentistry will be administered pursuant to subsection 448-10(a), Hawaii Revised Statutes.

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 7. This Act shall take effect upon its approval; provided that on the date that the board of dental examiners approves the American Board of Dental Examiners (ADEX) examination, section 448-10, Hawaii Revised Statutes, shall be repealed.

(Approved June 15, 2005.)

#### Notes

1. No subsection (b).
2. Edited pursuant to HRS §23G-16.5.

## ACT 122

S.B. NO. 118

A Bill for an Act Relating to the Board of Dental Examiners Examinations.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 447-1, Hawaii Revised Statutes, is amended to read as follows:

**“§447-1 Who may become dental hygienists; fees.** (a) Any person:

- (1) Eighteen years of age or over;
- (2) Holding and having a diploma or proper certificate of graduation from a dental hygiene school accredited by the American Dental Association (A.D.A.) Commission on Dental Accreditation requiring at least a two year course, recognized by the board of dental examiners; and
- (3) Having been officially certified in the administration of intra-oral infiltration local anesthesia and intra-oral block anesthesia by an accredited dental hygiene school or by a certification program previously approved by the board;

upon written application made to and filed with the board [~~at least sixty days prior to the date selected by the board for the examination,~~] may be examined [~~by the board~~] for qualification as a dental hygienist.

The application for examination shall be accompanied by the applicant's certificate of graduation from an accredited dental hygiene school together with documentary proof of the applicant's certification in the administration of intra-oral infiltration local anesthesia and intra-oral block anesthesia. At the time of filing the application, the applicant shall pay to the board application and examination fees, which fees, together with all other fees or charges in this chapter, shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, and shall be deposited to the credit of the compliance resolution fund established pursuant to section 26-9(o).

~~(b) [Two examinations shall be held in each year at the time the board designates. The examinations shall cover subjects considered essential by the board for a dental hygienist and shall likewise include a practical examination on the removal of deposits or stains from the surfaces of the teeth. The board shall furnish a chair and engine, but the applicant shall supply all necessary instruments, materials, and patients for the examination.~~

~~If the board is unable to administer an examination, a qualified applicant for the canceled board examination shall meet the board's examination requirement if the applicant:~~

- ~~(1) Within one year prior to the canceled board examination passed a regional or state examination satisfactory to the board; or~~
- ~~(2) Prior to the board's next administered examination takes and passes a regional or state examination satisfactory to the board.]~~

The board shall require an applicant to take and pass the State's examination or one of the following four regional examinations given after February 1, 2005, by:

- (1) The Western Regional Examining Board;
- (2) The Central Regional Dental Testing Service, Inc.;
- (3) The Southern Regional Testing Agency, Inc.; or
- (4) The North East Regional Board of Dental Examiners.

(c) Once a national examination is available, an applicant shall take and pass the national examination, and neither the state examination nor any regional examination shall be accepted; provided that an applicant who has taken and passed the state or a regional examination after February 1, 2005, but prior to the availability of a national examination shall be deemed to have met the board's examination requirement.

~~[(e)] (d) If the applicant successfully passes the examination, the applicant shall be licensed to practice as a dental hygienist in the State. Every licensed dental hygienist, before entering practice, shall pay the board a license fee. On or before December 31 of each odd-numbered year, every licensed dental hygienist desiring to begin or continue to practice in the State shall pay to the board a fee for the biennial licensure thereof. The failure, neglect, or refusal of any duly licensed dental hygienist to pay the biennial licensure fee shall constitute a forfeiture of the license, but the license may be restored upon written application therefor and payment to the board of a restoration fee.~~

~~[(d)] (e) An applicant's or licensed dental hygienist's competence to administer intra-oral infiltration local anesthesia shall be demonstrated by certification in the administration of intra-oral infiltration local anesthesia by an accredited dental hygiene school or by a certification program previously approved by the board. In addition, an applicant's or licensed dental hygienist's competence to administer intra-oral block anesthesia shall be demonstrated by proof of successful completion of a course of study in accordance with standards provided for in this chapter, and the issuance of a certificate or other program documentation listing the intra-oral block anesthesia categories in which the applicant or licensed dental hygienist has acquired knowledge and proficiency.~~

The applicant or licensed dental hygienist shall also submit documentation of the course content when submitting the certificate. The board shall certify that the applicant or licensed dental hygienist has met the requirements of this chapter; provided that the licensed dental hygienist's administration of intra-oral block anesthesia shall be under the direct supervision of a licensed dentist and shall be for those categories of intra-oral block anesthesia listed on the course of study certificate submitted to the board.

~~[(e)] (f) No person shall practice dental hygiene, either gratuitously or for pay, or shall offer or attempt so to practice, or shall advertise or announce publicly or privately as being prepared or qualified so to practice, without having a license as in~~

this section provided, nor shall any licensed dental hygienist practice except under the supervision of a licensed dentist as in this chapter provided.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 15, 2005.)

## ACT 123

S.B. NO. 700

A Bill for an Act Relating to Nuisance Abatement.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 712, Hawaii Revised Statutes, is amended by adding three new sections to part V to be appropriately designated and to read as follows:

“**§712- Standard of proof.** Except as may be otherwise expressly provided, the civil causes of action in this part shall be proved by a preponderance of the evidence.

**§712- Protective order.** If proof of the existence of the nuisance depends, in whole or in part, upon the affidavits or testimony of witnesses who are not law enforcement officers, the court, upon a showing of prior threats of violence or acts of violence by any defendant may issue orders to protect those witnesses including, but not limited to, the nondisclosure of the name, address, or any other information that may identify those witnesses.

**§712- Contempt.** Any person who knowingly violates any order issued pursuant to this part shall be subject to civil contempt as well as punishment for criminal contempt of court under section 710-1077. Nothing in this section shall be construed in any way to preclude or preempt a criminal prosecution for violation of a controlled substance offense or any other criminal offense.”

SECTION 2. Section 712-1270.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§712-1270.5]]~~ **Injunctions against persons.** Nothing in this part shall be construed to prohibit injunctions against persons causing, maintaining, aiding, abetting, or permitting a nuisance from entering or residing in any public or private building, premises, or place, in or upon which the nuisance exists.”

SECTION 3. Section 712-1271, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) Whenever there is reason to believe that a nuisance as defined in this chapter is in existence, kept, or maintained in any county, the attorney general of the State or the prosecutor or prosecuting attorney of the respective counties shall, or any citizen of the State residing within such county may in the citizen’s own name, or any organization, including, but not limited to a tenant organization within such county may in the organization’s own name, maintain a suit to abate and prevent the

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nuisance and to perpetually enjoin the person or persons causing, maintaining, aiding, abetting, or permitting the nuisance, or the owner, lessee, or agent of the building, premises, or place in or upon which the nuisance exists from directly or indirectly causing, maintaining, aiding, abetting, or permitting the nuisance.”

SECTION 4. Section 712-1272, Hawaii Revised Statutes, is amended to read as follows:

“**§712-1272 Temporary writ.** Whenever the existence of a nuisance is shown in a suit brought under this part to the satisfaction of the court or the judge thereof, either by verified petition or affidavit, or both, the court or judge thereof shall allow a temporary writ of injunction to abate and prevent the continuance or recurrence of such nuisance, which injunction may include a provision prohibiting the person or persons causing, maintaining, aiding, abetting, or permitting the nuisance from residing in or entering into the building, premises, or place in or upon which the nuisance exists. The petition in such suit need not be verified, except in those suits brought by a citizen in the citizen’s own name, or those suits brought by an organization in its own name, but shall be signed by the party bringing the same and shall include a certification that the complainant believes the allegations of the petition to be true.”

SECTION 5. Section 712-1273, Hawaii Revised Statutes, is amended to read as follows:

“**§712-1273 Suit to have precedence.** The suit when brought shall have precedence over all cases, excepting criminal proceedings, election contests, and hearings on injunctions, and in the suit evidence of the general reputation of the building, premises, place, or persons, and of the use or threat of violence shall be admissible for the purpose of proving the existence of the nuisance.”

SECTION 6. Section 712-1275, Hawaii Revised Statutes, is amended to read as follows:

“**§712-1275 Order of abatement.** If the existence of a nuisance is established in a suit as provided herein, an order of abatement shall be entered as a part of the judgment in the case, which order shall include a provision permanently prohibiting the person or persons causing, maintaining, aiding, abetting, or permitting the nuisance, if said person or persons are a party to the proceeding, from residing in or entering into the building, premises, or place in or upon which the nuisance exists. The court, on the application of the person, may suspend the prohibition if the person is participating in a court-approved treatment and monitoring program which addresses the person’s conduct which caused the nuisance. If the court determines that the person has successfully completed the program and that the person is not likely to again create a nuisance, the court may dissolve the injunction against the person. In the event that the court determines that an injunction against the person or persons causing, maintaining, aiding, abetting, or permitting the nuisance will not completely abate the nuisance or that one or more of the persons causing, maintaining, aiding, abetting, or permitting the nuisance are not parties to the proceeding, the court shall also direct the effectual closing of the building, premises, or place, against its use for any purpose, and that it be kept closed for a period not exceeding one year, unless sooner released, as provided by section 712-1277. While the order remains in effect as to closing, the building, premises, or place shall remain in the custody of the court. The court’s orders may also include, but are not limited to, an order suspending or revoking any business, professional, operational, or liquor license.”

SECTION 7. Section 712-1276, Hawaii Revised Statutes, is amended to read as follows:

**“§712-1276 Costs and expenses.** For any attorneys’ fees, costs, or expenses incurred in the closing of the building, premises, or place and keeping it closed, or incurred in enforcing the injunction prohibiting the person or persons causing, maintaining, aiding, abetting, or permitting the nuisance from residing or entering into the building, premises, or place in or upon which the nuisance exists, as well as the attorneys’ fees, costs, and expenses incurred by the party bringing the action, a reasonable sum shall be allowed by the court.”

SECTION 8. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 10. This Act shall take effect upon its approval.

(Approved June 15, 2005.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 124**

H.B. NO. 1749

A Bill for an Act Relating to Criminal Offenses.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. (a) The legislative reference bureau shall continue the review process commenced under House Concurrent Resolution No. 261, H.D. 1, S.D. 1, 2004, by periodically identifying, reviewing, and analyzing, to the extent possible, all state statutes (other than the Hawaii Penal Code) and rules that establish:

- (1) Criminal offenses specifically denominated as misdemeanors or petty misdemeanors; or
- (2) Criminal offenses that authorize imprisonment or fines in excess of \$1,000, or both,

but that involve conduct for which, typically, only a fine is imposed.

(b) The legislative reference bureau shall provide the judiciary with a list of the offenses identified pursuant to subsection (a)(1) and (2). The judiciary shall then identify any offenses that involve conduct for which, typically, only a fine is imposed and those that most frequently appear before the courts. The legislative reference bureau shall contact the state departments or agencies that have jurisdiction over the offenses identified by the judiciary and request their input as to whether and the extent to which the offenses can be decriminalized without undermining their ability to enforce laws within their jurisdiction.

(c) The legislative reference bureau shall recommend changes to the penalties imposed by the state statutes and rules identified pursuant to subsection (a) that would make the penalties more consistent with the penalties imposed for decriminalized traffic infractions. The legislative reference bureau shall submit a report of its findings and recommendations, including suggested legislation, no later than twenty days prior to the convening of the next regular session of the legislature.

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SECTION 2. Any state agency may recommend state statutes or rules to the legislative reference bureau for consideration for possible decriminalization under this Act.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 15, 2005.)

## ACT 125

H.B. NO. 1763

A Bill for an Act Relating to the Penal Code.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii penal code is the fundamental document by which the State addresses crime. It is imperative that such an important body of law receive full and deliberate attention from time to time, to ensure its continued force and effectiveness.

The decade following the passage of the Hawaii penal code in 1972 was marked by growing concern on the part of government and the public alike regarding the problem of crime. In response to the need for a comprehensive review of the penal code, the legislature appropriated funds in Act 291, Session Laws of Hawaii 1983, section 10, for a study of the penal code. The committee on penal code revision and reform of the judicial council of the Hawaii supreme court submitted "A Comprehensive Review & Reformation of the Hawaii Penal Code" to the Thirteenth Legislature in December, 1984. Many of the committee's recommendations were subsequently enacted into law in Act 314, Session Laws of Hawaii 1986.

During the ten years following the appointment of the committee, numerous amendments were made to the code on a piecemeal basis. However, there had not been a comprehensive review as to the effect these amendments had on the principles and philosophy on which the code was based. Moreover, there were concerns as to the structural and systemic impact these amendments had on the entire criminal justice system, including the court and the correctional system. Accordingly, the 1993 legislature determined that the time had arrived for a second review to take place and that this review should be concerned not only with periodic changes that had been made to the original 1972 code but also with the concept that the code was not an isolated body of law but rather a part of the entire criminal justice system of the State. A review was conducted pursuant to Act 284, Session Laws of Hawaii 1993. However, the legislature did not act upon the recommendations of the review.

Another decade has passed, and the time has come to revisit the recommendations of the prior review and to conduct a new study of the Hawaii penal code.

SECTION 2. The judicial council, established pursuant to section 601-4, Hawaii Revised Statutes, through a committee on penal code review, shall conduct a comprehensive review of the Hawaii penal code and recommend to the legislature amendments to the code it concludes are necessary so that:

- (1) The amendments to the penal code are consistent with and conform to the principles and philosophy of the code;
- (2) The code is in harmony with the entire criminal justice system; and
- (3) The continued force and effectiveness of the code is ensured.

The study shall be concluded and a final report submitted to the legislature, together with any proposed implementing legislation, no later than twenty days prior to the convening of the 2006 regular session of the legislature.

SECTION 3. The judicial council shall appoint a committee to assist it with the study in an advisory capacity. The advisory committee may include as members, representatives from the judiciary, the department of the attorney general, the prosecuting attorneys, the office of the public defender, the county police departments, private citizens interested in criminal law and civil liberties, Hawaii attorneys in private practice who handle criminal cases, the corrections and intake service centers divisions of the department of public safety, the Hawaii paroling authority, and victim advocacy groups. The committee shall include at least one member from each county. The members of the advisory committee shall serve without compensation but shall be reimbursed for expenses, including travel expenses necessary for the performance of their duties.

SECTION 4. The judicial council may appoint a reporter for the study and such other research and clerical staff as may be necessary without regard to chapter 76. In selecting the reporter and research assistant or assistants, the council is urged to use, to the greatest extent possible, the faculty and students of the William S. Richardson school of law.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$75,000 or so much thereof as may be necessary for fiscal year 2005-2006 to carry out the purposes of this Act.

The sum appropriated shall be expended by the judiciary for the purposes of this Act.

SECTION 6. This Act shall take effect upon its approval; provided section 5 shall take effect on July 1, 2005.

(Approved June 15, 2005.)

## ACT 126

S.B. NO. 1891

A Bill for an Act Relating to Boating.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 200-10, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The permittee shall pay moorage fees to the department for the use permit [which] that shall be based on, but not limited to, the use of the vessel, its effect on the harbor, use of facilities, and the cost of administering this mooring program; and, furthermore:

- (1) Moorage fees shall be established by the department and shall be higher for nonresidents;
- (2) An application fee shall be collected when applying for moorage in state small boat harbors and shall thereafter be collected annually when the application is renewed. The application fee shall be:
  - (A) Set by the department; and
  - (B) Not less than \$100 for nonresidents;

- (3) If a recreational vessel is used as a place of principal habitation, the permittee shall pay, in addition to the moorage fee, a liveaboard fee ~~[which]~~ that shall be~~[:]~~ calculated at a rate of:
  - (A) \$5.20 a foot of vessel length a month if the permittee is a state resident; and
  - (B) \$7.80 a foot of vessel length a month if the permittee is a nonresident;

provided that the liveaboard fees established by this ~~[subsection]~~ paragraph may be increased by the department at the rate of the annual cost-of-living index, but not more than five per cent in any one year, beginning January 1 of each year; and
- (4) If a vessel is used for commercial purposes from its permitted mooring, the permittee shall pay, in lieu of the moorage and liveaboard fee, a fee based on ~~[a percentage]~~ three per cent of the gross revenues derived from the use of the vessel ~~[which shall be not less than]~~ or two times the moorage fee assessed for a recreational vessel of the same size[-], whichever is greater.”

SECTION 2. Section 200-34, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§200-34]]~~ **Disposition of revenues.** All fees and penalties collected pursuant to ~~[section]~~ sections 200-10, 200-14, 200-14.5, 200-25, and 200-32, and all fees and penalties established by rules adopted pursuant to sections 200-4 and 200-24, shall be deposited in the boating special fund.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2005.

(Approved June 16, 2005.)

**ACT 127**

S.B. NO. 1378

A Bill for an Act Relating to the Pearl Harbor Historic Trail.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. During the regular session of 2004, the Senate introduced Senate Concurrent Resolution No. 103, to support the planning, construction, and completion of the leeward bike path and Pearl Harbor historic trail to be used by Oahu residents and tourists as a transportation corridor for pedestrians, recreational opportunities, and healthy living initiatives.

The Pearl Harbor historic trail and the leeward bike path will merge into a multi-use path that will run approximately 18.6 miles from Halawa landing to Waipahu. Friends of Pearl Harbor Historic Trail, a nonprofit corporation, has been active in the community, providing a conduit for partnerships with local community groups and nonprofit organizations to support the completion of the trail. The goals for the trail are to:

- (1) Create an outdoor recreation and transportation network;
- (2) Use the right-of-way for the old Oahu Railway and Land Company as a springboard for historic preservation and education;



- (3) Create economic opportunities for community businesses; and
- (4) Enhance environmental preservation and education.

Finally, in the central Oahu sustainable communities plan, the Pearl Harbor historic trail is planned to be part of the Waipahu shoreline park.

The purpose of this Act is to recognize the Pearl Harbor historic trail to meet the necessary requirements for federal funding opportunities to support the planning, construction, and completion of the trail.

SECTION 2. Chapter 6E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§6E- Pearl Harbor historic trail.** The official designation of the path that runs from Halawa landing to Waipahu shall be the Pearl Harbor historic trail.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved June 16, 2005.)

**Note**

- 1. Edited pursuant to HRS §23G-16.5.

## ACT 128

H.B. NO. 712

A Bill for an Act Relating to Violations of Chapter 6E.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 6E, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

### “PART . CRIMINAL OFFENSES

**§6E- Taking, appropriation, excavation, injury, destruction, or alteration of historic property or aviation artifact; penalty.** (a) A person commits the offense of taking, appropriation, excavation, injury, destruction, or alteration of historic property or aviation artifact if the person knowingly:

- (1) Takes, appropriates, excavates, injures, destroys, or alters any historic property or aviation artifact located upon the private land of any owner thereof without the owner’s written permission being first obtained; or
- (2) Takes, appropriates, excavates, injures, destroys, or alters any historic property or aviation artifact located upon land owned or controlled by the State or any of its political subdivisions, except as permitted by the department.

(b) Taking, appropriation, excavation, injury, destruction, or alteration of historic property or aviation artifact is a misdemeanor for which a fine not to exceed \$25,000 may be imposed, in addition to any other penalty authorized by chapter 706 for a misdemeanor.

(c) Each day of a continued violation of this section shall constitute a distinct and separate offense.

**§6E- Taking, appropriation, excavation, injury, destruction, or alteration of a burial site; penalty.** (a) A person commits the offense of taking,

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appropriation, excavation, injury, destruction, or alteration of a burial site if the person knowingly:

- (1) Takes, appropriates, excavates, injures, destroys, or alters any burial site or the contents thereof, located on private land or land owned or controlled by the State or any of its political subdivisions, except as permitted by the department; or
- (2) Takes, appropriates, excavates, injures, destroys, or alters any burial site or the contents thereof during the course of land development or land alteration activities to which section 6E-42 applies, without obtaining the required approval.

(b) Taking, appropriation, excavation, injury, destruction, or alteration of a burial site is a misdemeanor for which a fine not to exceed \$25,000 may be imposed, in addition to any other penalty authorized by chapter 706 for a misdemeanor.

(c) Each day of a continued violation of this section shall constitute a distinct and separate offense.

### **§6E- Failure to stop work upon discovery of a burial site; penalty.**

(a) A person commits the offense of failure to stop work upon discovery of a burial site if the person discovers a burial site and knowingly fails to stop work in the immediate area and report the discovery as required by section 6E-43.6.

(b) It is not a defense to the prosecution of a violation of this section that the discovery of the burial site was inadvertent.

(c) Failure to stop work upon discovery of a burial site is a misdemeanor for which a fine not to exceed \$25,000 may be imposed in addition to any other penalty authorized by chapter 706 for a misdemeanor.

(d) Each day of a continued violation of this section shall constitute a distinct and separate offense.

**§6E- Criminal penalties not in lieu of civil or administrative penalties.** The criminal penalties imposed by this part are in addition to, and not in lieu of, any civil or administrative penalties provided by law.

**§6E- Part not applicable to family burial plots.** Nothing in this part shall apply to land altering activities related to family burial plots under section 441-5.5.”

SECTION 2. Section 6E-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Person” means any individual, firm, corporation, partnership, or association.”

SECTION 3. Section 6E-11, Hawaii Revised Statutes, is amended to read as follows:

“**§6E-11 [Penalties.] Civil and administrative violations.** (a) It shall be [~~unlawful~~] a civil and administrative violation for any person[~~, natural or corporate,~~] to take, appropriate, excavate, injure, destroy, or alter any historic property or aviation artifact located upon the private lands of any owner thereof without the owner’s written permission being first obtained. It shall be [~~unlawful~~] a civil and administrative violation for any person[~~, natural or corporate,~~] to take, appropriate, excavate, injure, destroy, or alter any historic property or aviation artifact located upon lands owned or controlled by the State or any of its political subdivisions, except as permitted by the department.

(b) It shall be ~~[unlawful]~~ a civil and administrative violation for any person~~;~~ ~~[natural or corporate,]~~ to knowingly take, appropriate, excavate, injure, destroy, or alter any burial site or the contents thereof, located on private lands or lands owned or controlled by the State or any of its political subdivisions, except as permitted by the department~~[-. Violators of this subsection are also subject to prosecution pursuant to section 711-1107, the penalties for which shall be imposed in addition to, and not in lieu of, any penalties imposed under this section.]-, or to knowingly fail to re-inter human remains discovered on the lands in a reasonable period of time as determined by the department.~~

(c) It shall be ~~[unlawful]~~ a civil and administrative violation for any person to take, appropriate, excavate, injure, destroy, or alter any historic property or burial site during the course of land development or land alteration activities to which section 6E-42 applies, without obtaining the required approval. ~~[The penalties imposed pursuant to subsections (e) and (f) shall be in addition to any other penalties that may be imposed pursuant to law.]~~

(d) It shall be ~~[unlawful]~~ a civil and administrative violation for any person who inadvertently discovers a burial site to fail to stop work in the immediate area and report the discovery, as required by section 6E-43.6.

(e) It shall be a civil and administrative violation for any person to knowingly glue together any human skeletal remains, label any human skeletal remains with any type of marking pen, or conduct any tests that destroy human skeletal remains, as defined in chapter 6E, except as permitted by the department.

~~[(e)] (f) Any person who violates this section shall be fined not more than \$10,000 for each separate [offense.] violation. If the violator directly or indirectly has caused the loss of, or damage to, any historic property or burial site, the violator shall be fined an additional amount determined by the court or an administrative adjudicative authority to be equivalent to the value of the lost or damaged historic property or burial site. Each day of continued violation of this provision shall constitute a distinct and separate [offense] violation for which the [offender] violator may be punished. Equipment used by a violator for the taking, appropriation, excavation, injury, destruction, or alteration of any historic property or burial site, or for the transportation of the violator to or from the historic property or [a] burial site, shall be subject to seizure and disposition by the State without compensation to its owner or owners.~~

~~[(f)] (g) Any person[-, natural or corporate,] who knowingly violates this [section] chapter with respect to burial sites shall also be prohibited from participating in the construction of any state or county funded project for ten years.~~

~~[(g)] (h) Nothing in this section shall apply to land altering activities relating to family burial plots under section 441-5.5.~~

(i) The civil and administrative penalties imposed pursuant to this chapter shall be in addition to the criminal penalties provided by this chapter and any other penalties that may be imposed pursuant to law."

SECTION 4. Section 6E-11.5, Hawaii Revised Statutes, is amended to read as follows:

"[H]§6E-11.5[.] Civil penalties. [Any] Except as provided in section 6E-11, any person who violates this chapter, or any rule adopted pursuant to this chapter shall be fined not less than \$500 nor more than \$10,000 for each separate [offense.] violation. Each day of each violation constitutes a separate [offense.] violation."

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

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SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 16, 2005.)

### Note

1. Prior to amendment, the word "a" appeared here.

## ACT 129

H.B. NO. 1659

A Bill for an Act Relating to Noncommercial Piers.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that in May of 1998, the board of land and natural resources approved a plan to address unauthorized piers in Kaneohe bay after several decades of non-enforcement. Nearly two hundred shorefront property owners in Kaneohe bay had piers, many of which were built before statehood. Many of the pier owners, as well as countless others statewide, were unaware that their piers lacked proper authorization from the State and were considered illegal. As a result, the Governor signed Act 261, Session Laws of Hawaii (SLH) 2000, on June 20, 2000, which established a new section under chapter 171, Hawaii Revised Statutes, to read:

### **“Private residential noncommercial piers.**

Notwithstanding any limitations to the contrary, the board of land and natural resources may lease, by direct negotiation and without recourse to public auction, state submerged lands or lands beneath tidal waters for private residential non-commercial piers on such terms and conditions as may be prescribed by the board.”

The legislature further finds that an amnesty program was therefore established in 2000 and 2001 to provide noncommercial pier owners with the appropriate permits for legal authorization and to resolve the illegal pier problem in Kaneohe bay. The legislature also finds that as of January 1, 2005, only twelve out of one hundred sixty Kaneohe bay pier owners had obtained a new lease, with an additional fifty cases in the process of approval with no guarantee of completion before the deadline of June 30, 2005, due to the difficulties and time constraints involved in obtaining all of the required surveys, appraisals, and additional documentation. The legislature further finds that additional time is needed to negotiate long-term leases with private noncommercial pier owners across the state, in areas such as Wailupe, Niuiki Circle, and Port Lock, given the disproportionate attention paid primarily to Kaneohe bay pier owners in the implementation of Act 261, SLH 2000.

The purpose of this Act is to:

- (1) Allow noncommercial pier owners more time to negotiate leases of state submerged lands or lands beneath tidal waters by extending the repeal date of Act 261, SLH 2000, from June 30, 2005, to June 30, 2007; and
- (2) Urge DLNR to commence using the prevailing real property tax assessment value of the fast land in determining the lease rent for the submerged land lease entered into after July 1, 2006, to prompt procrastinating pier owners who desire to enter into leases with the State.

SECTION 2. Act 261, Session Laws of Hawaii 2000, as amended by Act 68, Session Laws of Hawaii 2002, section 2, as amended by Act 103, Session Laws of Hawaii 2002, section 1, is amended by amending section 5 to read as follows:

- “SECTION 5. This Act shall take effect upon its approval; provided that:
- (1) The authority granted to the department of land and natural resources to enter into lease agreements with owners of private noncommercial piers shall be repealed on June 30, [2005;] 2007;
  - (2) The amendments made by sections 1 and 3 of this Act to the Hawaii Revised Statutes, shall be repealed as of June 30, [2005;] 2007, and section 171-53(c), Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act;
  - (3) The amendment made by section 2 of this Act to section 171-36(a), which deleted paragraph (9), shall be repealed as of June 30, [2005;] 2007, and paragraph (9) shall be reenacted in the form in which it read on June 19, 2000; and
  - (4) Any lease agreement executed pursuant to this Act prior to June 30, [2005;] 2007, or any lease extension executed thereon after the repeal of this Act, shall remain exempt from section 171-36(a)(9), Hawaii Revised Statutes, after the repeal of this Act.”

SECTION 3. To prompt procrastinating pier owners who desire to enter into leases with the State for their noncommercial piers, the department of land and natural resources is urged to commence using the prevailing real property tax assessment value of the fast land in determining lease rent for a lease of the state submerged land or land beneath tidal water entered into after July 1, 2006.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on June 29, 2005.

(Approved June 16, 2005.)

## ACT 130

H.B. NO. 408

A Bill for an Act Relating to the Environment.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that various approving agencies are interpreting the meaning of “wastewater facility”, as used in chapter 343, Hawaii Revised Statutes, differently, thereby causing confusion in the environmental review process.

The intent of the legislature in Act 55, Session Laws of Hawaii 2004, was to trigger the environmental review process for a newly proposed wastewater facility. The term “wastewater facility” in Act 55, was not intended to include only a portion of an existing facility, such as the collection system of an existing wastewater facility.

The legislature also finds that the definition of wastewater treatment unit in the department of health’s wastewater systems administrative rules encompasses a wastewater treatment facility. Therefore, the legislature finds that the term “waste-

water treatment unit” is a more appropriate description of the type of new project that would trigger an environmental review process.

The legislature further finds that the present environmental review process allows the proposing agency to determine whether its own project may cause a significant impact. Because the proposing agency and the determining agency are the same, a lack of impartiality may exist.

Accordingly, the purpose of this Act is to strengthen the environmental review process by:

- (1) Clarifying the intent of Act 55, Session Laws of Hawaii 2004, by providing a definition for “wastewater treatment unit” that encompasses wastewater facilities; and
- (2) Clarifying that when the proposing agency and the determining agency are the same, the office of environmental quality control may review an agency’s determination, consult the agency, and advise of non-compliance with chapter 343.

SECTION 2. Section 343-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Wastewater treatment unit” means any plant or facility used in the treatment of wastewater.”

SECTION 3. Section 343-5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Except as otherwise provided, an environmental assessment shall be required for actions that:

- (1) Propose the use of state or county lands or the use of state or county funds, other than funds to be used for feasibility or planning studies for possible future programs or projects that the agency has not approved, adopted, or funded, or funds to be used for the acquisition of unimproved real property; provided that the agency shall consider environmental factors and available alternatives in its feasibility or planning studies;
- (2) Propose any use within any land classified as a conservation district by the state land use commission under chapter 205;
- (3) Propose any use within a shoreline area as defined in section 205A-41;
- (4) Propose any use within any historic site as designated in the National Register or Hawaii Register, as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or chapter 6E;
- (5) Propose any use within the Waikiki area of Oahu, the boundaries of which are delineated in the land use ordinance as amended, establishing the “Waikiki Special District”;
- (6) Propose any amendments to existing county general plans where the amendment would result in designations other than agriculture, conservation, or preservation, except actions proposing any new county general plan or amendments to any existing county general plan initiated by a county;
- (7) Propose any reclassification of any land classified as a conservation district by the state land use commission under chapter 205;
- (8) Propose the construction of new or the expansion or modification of existing helicopter facilities within the State, [~~which,~~] that by way of their activities, may affect:
  - (A) Any land classified as a conservation district by the state land use commission under chapter 205;

- (B) [The] A shoreline area as defined in section 205A-41; or
  - (C) Any historic site as designated in the National Register or Hawaii Register, as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or chapter 6E; or until the statewide historic places inventory is completed, any historic site that is found by a field reconnaissance of the area affected by the helicopter facility and is under consideration for placement on the National Register or the Hawaii Register of Historic Places; and
- (9) Propose any:
- (A) Wastewater [facility,] treatment unit, except an individual wastewater system or a wastewater [facility] treatment unit serving fewer than fifty single-family dwellings or the equivalent;
  - (B) Waste-to-energy facility;
  - (C) Landfill;
  - (D) Oil refinery; or
  - (E) Power-generating facility.

(b) Whenever an agency proposes an action in subsection (a), other than feasibility or planning studies for possible future programs or projects that the agency has not approved, adopted, or funded, or other than the use of state or county funds for the acquisition of unimproved real property that is not a specific type of action declared exempt under section 343-6, the agency shall prepare an environmental assessment for such action at the earliest practicable time to determine whether an environmental impact statement shall be required.

(1) For environmental assessments for which a finding of no significant impact is anticipated:

- [(1)] (A) A draft environmental assessment shall be made available for public review and comment for a period of thirty days;
- [(2)] (B) The office shall inform the public of the availability of the draft environmental assessment for public review and comment pursuant to section 343-3;
- [(3)] (C) The agency shall respond in writing to comments received during the review and prepare a final environmental assessment to determine whether an environmental impact statement shall be required;
- [(4)] (D) A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment; and
- [(5)] (E) The agency shall file notice of such determination with the office[, which, in turn, shall publish the agency's]. When a conflict of interest may exist because the proposing agency and the agency making the determination are the same, the office may review the agency's determination, consult the agency, and advise the agency of potential conflicts, to comply with this section. The office shall publish the final determination for the public's information pursuant to section 343-3.

The draft and final statements, if required, shall be prepared by the agency and submitted to the office. The draft statement shall be made available for public review and comment through the office for a period of forty-five days. The office shall inform the public of the availability of the draft statement for public review and comment pursuant to section 343-3. The agency shall respond in writing to comments received during the review and prepare a final statement.

The office, when requested by the agency, may make a recommendation as to the acceptability of the final statement.

(2) The final authority to accept a final statement shall rest with:

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- ~~[(1)]~~ (A) The governor, or the governor's authorized representative, whenever an action proposes the use of state lands or the use of state funds, or whenever a state agency proposes an action within the categories in subsection (a); or
- ~~[(2)]~~ (B) The mayor, or the mayor's authorized representative, of the respective county whenever an action proposes only the use of county lands or county funds.

Acceptance of a required final statement shall be a condition precedent to implementation of the proposed action. Upon acceptance or nonacceptance of the final statement, the governor or mayor, or the governor's or mayor's authorized representative, shall file notice of such determination with the office. The office, in turn, shall publish the determination of acceptance or nonacceptance pursuant to section 343-3."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2005.

(Approved June 16, 2005.)

## ACT 131

S.B. NO. 682

A Bill for an Act Relating to Tobacco.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 245, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

**“§245-A Retail tobacco permit.** (a) Beginning December 1, 2006, every retailer engaged in the retail sale of cigarettes and other tobacco products upon which a tax is required to be paid under this chapter shall obtain a retail tobacco permit.

(b) Beginning March 1, 2007, it shall be unlawful for any retailer engaged in the retail sale of cigarettes and other tobacco products upon which a tax is required to be paid under this chapter to sell, possess, keep, acquire, distribute, or transport cigarettes or other tobacco products for retail sale unless a retail tobacco permit has been issued to the retailer under this section and the retail tobacco permit is in full force and effect.

(c) The retail tobacco permit shall be issued by the department upon application by the retailer in the form and manner prescribed by the department, and the payment of a fee of \$20. Permits shall be valid for one year, from December 1 to November 30, and renewable annually. Whenever a retail tobacco permit is defaced, destroyed, or lost, or the permittee relocates the permittee's business, the department may issue a duplicate retail tobacco permit to the permittee for a fee of \$5 per copy.

(d) A separate retail tobacco permit shall be obtained for each place of business owned, controlled, or operated by a retailer. A retailer that owns or controls more than one place of business may submit a single application for more than one retail tobacco permit. Each retail tobacco permit issued shall clearly describe the place of business where the operation of the business is conducted.



(e) Any entity that operates as a dealer or wholesaler and also sells cigarettes or other tobacco products to consumers at retail shall acquire a separate retail tobacco permit.

(f) A retail tobacco permit shall be nonassignable and nontransferable from one entity to another entity. A retail tobacco permit may be transferred from one business location to another business location after an application has been filed with the department requesting that transfer and approval has been obtained from the department.

(g) A retail tobacco permit issued under this section shall be displayed at all times in a conspicuous place at the place of business requiring the retail tobacco permit.

(h) Any sales of cigarettes or tobacco products made through a cigarette or tobacco product vending machine are subject to the terms, conditions, and penalties of this chapter. A retail tobacco permit need not be displayed on cigarette or tobacco product vending machines if the retail tobacco permit holder is the owner of the cigarette or tobacco product vending machines and the cigarette or tobacco product vending machines are operated at the location described in the retail tobacco permit.

(i) No retailer shall purchase any pack of cigarettes without the appropriate tax stamp being affixed to the bottom of the pack as required by this chapter.

(j) A vehicle from which cigarettes or tobacco products are sold is considered a place of business and requires a retail tobacco permit. Retail tobacco permits for a vehicle shall be issued bearing a specific motor vehicle identification number and are valid only when physically carried in the vehicle having the corresponding motor vehicle identification number. Retail tobacco permits for vehicles shall not be moved from one vehicle to another.

(k) A permittee shall be subject to the inspection and investigation requirements of this chapter and shall provide the department or the attorney general with any information deemed necessary to verify compliance with the requirements of this chapter.

(l) A permittee shall keep a complete and accurate record of the permittee's cigarette or tobacco product inventory. The records shall:

(1) Include:

- (A) A written statement containing the name and address of the permittee's source of its cigarettes and tobacco products;
- (B) The date of delivery, quantity, trade name or brand, and price of the cigarettes and tobacco products; and
- (C) Documentation in the form of any purchase orders, invoices, bills of lading, other written statements, books, papers, or records in whatever format, including electronic format, which substantiate the purchase or acquisition of the cigarettes and tobacco products stored or offered for sale; and

(2) Be offered for inspection and examination within twenty-four hours of demand by the department or the attorney general, and shall be preserved for a period of three years; provided that:

- (A) Specified records may be destroyed if the department and the attorney general both consent to their destruction within the three-year period; and
- (B) Either the department or the attorney general may adopt rules pursuant to chapter 91 that require specified records to be kept longer than a period of three years.

(m) The department may suspend or, after hearing, revoke or decline to renew any retail tobacco permit issued under this chapter whenever the department

finds that the applicant or permittee has failed to comply with this chapter or any rule adopted under this chapter, or for any other good cause. Good cause includes but is not limited to instances where an applicant or permittee has:

- (1) Submitted a false or fraudulent application or provided a false statement in an application; or
- (2) Possessed or displayed a false or fraudulent retail tobacco permit.

Upon suspending or revoking any retail tobacco permit, the department shall request that the permittee immediately surrender any retail tobacco permit or duplicate issued to the permittee, and the permittee shall surrender the permit or duplicate promptly to the department as requested.

(n) Whenever the department suspends, revokes, or declines to renew a retail tobacco permit, the department shall notify the applicant or permittee immediately and afford the applicant or permittee a hearing, if requested and if a hearing has not already been afforded. After the hearing, the department shall:

- (1) Rescind its order of suspension;
- (2) Continue the suspension;
- (3) Revoke the retail tobacco permit;
- (4) Rescind its order of revocation;
- (5) Decline to renew the retail tobacco permit; or
- (6) Renew the retail tobacco permit.

(o) Any cigarette, package of cigarettes, carton of cigarettes, container of cigarettes, tobacco product, package of tobacco products, or any container of tobacco products unlawfully sold, possessed, kept, stored, acquired, distributed, or transported in violation of this section may be seized and ordered forfeited pursuant to chapter 712A.

**§245-B Unlawful tobacco retailing in the first degree.** (a) Beginning March 1, 2007, a person or entity required to obtain a retail tobacco permit commits the offense of unlawful tobacco retailing in the first degree if the person or entity knowingly fails to obtain a valid permit required under section 245-A and, for the purposes of retail sale, recklessly sells, possesses, stores, acquires, distributes, or transports five thousand or more cigarettes.

(b) Unlawful tobacco retailing in the first degree is a misdemeanor, except that any offense under subsection (a) that occurs within five years of a conviction for unlawful tobacco retailing in the first degree is a class C felony.

**§245-C Unlawful tobacco retailing in the second degree.** (a) Beginning March 1, 2007, a person or entity required to obtain a retail tobacco permit commits the offense of unlawful tobacco retailing in the second degree if the person or entity recklessly fails to obtain a valid permit required under section 245-A and, for the purposes of retail sale, recklessly sells, possesses, stores, acquires, distributes, or transports fewer than five thousand cigarettes or any tobacco products.

(b) Unlawful tobacco retailing in the second degree is petty misdemeanor, except that any offense under subsection (a) that occurs within five years of a conviction for unlawful tobacco retailing in the first or second degree is a misdemeanor.”

SECTION 2. Section 245-1, Hawaii Revised Statutes, is amended as follows:

(1) By adding six new definitions to be appropriately inserted and to read as follows:

““Business location” or “place of business” means the entire premises occupied by a retail tobacco permit applicant or an entity required to hold a retail

tobacco permit under this chapter and shall include but is not limited to any store, stand, outlet, vehicle, cart, location, vending machine, or structure from which cigarettes or tobacco products are sold or distributed to a consumer.

“Consumer” means a person who acquires or possesses a cigarette or a tobacco product for personal consumption and not for resale or distribution.

“Permittee” means the holder of a retail tobacco permit in accordance with this chapter.

“Retail sale” or “tobacco retailing” means the practice of selling cigarettes or tobacco products to consumers and includes the sale of cigarettes or tobacco through a vending machine.

“Retail tobacco permit” means a permit granted under this chapter that authorizes an entity to engage in the business of selling cigarettes and tobacco products to consumers.

“Retailer” means an entity that engages in the practice of selling cigarettes or tobacco products to consumers and includes the owner of a cigarette or tobacco product vending machine.”

(2) By amending the definitions of “license” and “licensee” to read as follows:

““License” means a license granted under this chapter, that authorizes the holder to engage in the business of a wholesaler or dealer of cigarettes or tobacco products in the State. For purposes of any action brought pursuant to section 231-35, the term “license” shall include a retail tobacco permit required under this chapter.

“Licensee” means the holder of a license as a wholesaler or dealer granted under this chapter.”

SECTION 3. Section 245-2, Hawaii Revised Statutes, is amended to read as follows:

“§245-2 License. (a) It shall be unlawful for any person to engage in the business of a wholesaler or dealer in the State without having received first a license therefor issued by the department of taxation under this chapter; provided that this section shall not be construed to supersede any other law relating to licensing of persons in the same business.

(b) The license shall be issued by the department upon application therefor, in such form and manner as shall be required by rule of the department, and the payment of a fee of \$2.50, and shall be renewable annually on July 1 for the twelve months ending the succeeding June 30.

(c) The department may suspend or, after hearing, revoke or decline to renew any license issued under this chapter whenever the department finds that the applicant or licensee has failed to comply with this chapter or any rule adopted under this chapter, or for any other good cause. Good cause includes but is not limited to instances where an applicant or licensee has:

(1) Submitted a false or fraudulent application or provided a false statement in an application; or

(2) Possessed or displayed a false or fraudulent license.

Upon suspending or revoking any license, the department shall request that the licensee immediately surrender the license or any duplicate issued to the licensee and the licensee shall surrender the license or duplicate promptly to the department as requested.

(d) Whenever the department suspends, revokes, or declines to renew a license, the department shall notify the applicant or licensee immediately and afford the applicant or licensee a hearing, if requested and if a hearing has not already been afforded. After the hearing, the department shall:

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- (1) Rescind its order of suspension;
- (2) Continue the suspension;
- (3) Revoke the license;
- (4) Rescind its order of revocation;
- (5) Decline to renew the license; or
- (6) Renew the license.’’

SECTION 4. There is appropriated out of the tobacco enforcement special fund the sum of \$130,953 or so much thereof as may be necessary for fiscal year 2006-2007, and such sum shall be transferred to the department of taxation to establish and administer the licensing and permitting of tobacco and cigarette sales, including the establishment of three permanent full-time equivalent (3.00 FTE) positions, and for other expenses incurred by the department of taxation in order to carry out the purposes of this Act.

The sum appropriated shall be expended by the department of the attorney general for the purposes of this Act.

SECTION 5. There is appropriated from the interdepartmental appropriation transferred from the department of the attorney general the sum of \$130,953, or so much thereof as may be necessary, for fiscal year 2006-2007, for the department of taxation to establish and administer the licensing and permitting of tobacco and cigarette sales, including the establishment of three permanent full-time equivalent (3.00 FTE) positions, and for other expenses incurred in order to carry out the purposes of this Act.

The sum appropriated shall be expended by the department of taxation for the purposes of this Act.

SECTION 6. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 9. This Act shall take effect upon its approval; provided that:

- (1) Sections 4 and 5 of this Act shall take effect on July 1, 2006; and
- (2) This Act shall be repealed on July 1, 2009; provided that sections 245-1 and 245-2, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the approval of this Act.

(Approved June 16, 2005.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 132

S.B. NO. 754

A Bill for an Act Relating to Insurance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 431:2-302, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The commissioner or any authorized examiner may conduct an examination of any company as often as the commissioner deems appropriate, but, at a minimum, shall conduct an examination of each domestic insurer at least once ~~[in every three years, and conduct an examination of every other insurer licensed in this State at least once]~~ every five years. In scheduling and determining the nature, scope, and frequency of the examinations, the commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the examiners’ handbook adopted by the National Association of Insurance Commissioners and in effect, when the commissioner exercises discretion under this section.”

SECTION 2. Section 431:3-219, Hawaii Revised Statutes, is amended to read as follows:

“**§431:3-219 Suspension period[-]; revocation.** (a) Except as otherwise expressly provided in this code, the commissioner may suspend an insurer’s certificate of authority for a period not to exceed one year. The commissioner shall state in the commissioner’s order of suspension the period during which it ~~[will]~~ shall be effective.

(b) After the completion of the original suspension period, the commissioner may order additional extensions of the suspension or revoke an insurer’s certificate of authority pursuant to section 431:3-218, provided there is a basis for the extended suspension or revocation and the insurer has an opportunity for a hearing prior to the imposition of the extended suspension or revocation.”

SECTION 3. Section 431:9-237, Hawaii Revised Statutes, is amended to read as follows:

“**§431:9-237 Duration of suspension.** Every order suspending any license shall specify the period during which suspension will be effective~~[-, and which period shall in no event exceed one year].~~”

SECTION 4. Section 431:14-105, Hawaii Revised Statutes, is amended to read as follows:

“**§431:14-105 Policy revisions [which] that alter coverage.** ~~[All]~~ Any policy revisions ~~[which] that~~ alter coverage in any manner shall be filed with the commissioner~~[-], consist of two printed copies and one copy by electronic, telephonic, or optical means, and include an analysis of the impact of each revision on rates.~~

After review by the commissioner, the commissioner shall determine whether a rate filing for the policy revision must be submitted in accordance with section 431:14-104.”

SECTION 5. Section 431:15-310, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) The liquidator shall have the power to:
- (1) Appoint a special deputy to act for the liquidator under this article, and to determine the special deputy’s reasonable compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator;
  - (2) Employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and such other personnel as the liquidator deems necessary to assist in the liquidation;
  - (3) Fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers, and consultants with the approval of the court;
  - (4) Pay reasonable compensation to persons appointed, and defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. ~~[In the event that]~~ If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs [sø] incurred out of any appropriation for the maintenance of the insurance division. Any amounts [sø] advanced for expenses of administration shall be repaid to the commissioner for the use of the insurance division out of the first available moneys of the insurer;
  - (5) Hold hearings, including but not limited to hearings convened for the purpose of receiving testimony and evidence to determine whether any assets of the insurer have been concealed, misappropriated, or improperly transferred from the insurer. Prior to or at any hearing convened by the liquidator, the liquidator may subpoena witnesses to compel their attendance, administer oaths, examine any person under oath, and compel any party to subscribe to their testimony after it has been correctly reduced to writing, and in connection therewith require the production of any books, papers, records, or other documents that the liquidator deems relevant to the inquiry;
  - (6) Collect all debts and moneys due and claims belonging to the insurer, wherever located, and for this purpose to:
    - (A) Institute timely action in other jurisdictions, to forestall garnishment and attachment proceedings against such debts;
    - (B) Do such other acts as are necessary or expedient to collect, conserve, or protect its assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon such terms and conditions as the liquidator deems best; and
    - (C) Pursue any creditor’s remedies available to enforce [his] the creditor’s claims;
  - (7) Conduct public and private sales of the property of the insurer;
  - (8) Use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under section 431:15-332;
  - (9) Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with, any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable. The liquidator shall also have power to execute, acknowl-

- edge, and deliver any and all deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation;
- (10) Borrow money on the security of the insurer's assets, or without security, and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation;
  - (11) Enter into such contracts as are necessary to carry out the order to liquidate, and affirm or disavow any contracts to which the insurer is a party;
  - (12) Continue to prosecute and institute in the name of the insurer or in the liquidator's own name any and all suits and other legal proceedings in this State or elsewhere, and abandon the prosecution of claims the liquidator deems unprofitable to pursue further. If the insurer is dissolved under section 431:15-309, the liquidator shall have the power to apply to any court in this State or elsewhere for leave to substitute the liquidator for the insurer as plaintiff;
  - (13) Prosecute any action that may exist on behalf of the creditors, members, policyholders, or shareholders of the insurer against any officer of the insurer, or any other person;
  - (14) Remove any or all records and property of the insurer to the offices of the commissioner or to ~~such other~~ another place ~~as~~ that may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty associations and foreign guaranty associations shall have ~~such~~ reasonable access to the records of the insurer as is necessary for them to carry out their statutory obligations;
  - (15) Deposit in one or more banks in this State ~~such~~ sums ~~as~~ that are required for meeting current administration expenses and dividend distributions;
  - (16) Invest all sums not currently needed, unless the court orders otherwise;
  - (17) File any necessary documents for recordation in the bureau of conveyances or other appropriate office or elsewhere where property of the insurer is located;
  - (18) Assert all defenses available to the insurer ~~as~~ against third persons, including statutes of limitations, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition in liquidation has been filed shall not bind the liquidator. Whenever a guaranty association or foreign guaranty association has an obligation to defend any suit, the liquidator shall give precedence to ~~such~~ the obligation and may defend only in the absence of a defense by ~~such~~ the guaranty associations;
  - (19) Exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included with sections 431:15-315 ~~through~~ to 431:15-317;
  - (20) Intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered;
  - (21) Enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states; and
  - (22) Exercise all powers now held or hereafter conferred upon receivers by the laws of this State not inconsistent with the provisions of this article."

SECTION 6. Section 431:15-323, Hawaii Revised Statutes, is amended to read as follows:

**“§431:15-323 Recovery of premiums owed.** (a) A producer, premium finance company, or any other person, other than the insured, responsible for the payment of a premium shall be obligated to pay upon written demand by the liquidator any unpaid collected premium held by [~~such~~] the person [~~at the time of the declaration of insolvency~~], whether earned or unearned, as shown on the records of the insurer. A producer, premium finance company, or any other person shall have no obligation to pay an uncollected, unpaid, unearned premium to the liquidator. The liquidator shall also have the right to recover from [~~such~~] the person any part of an unearned premium that represents commission actually paid or credited to [~~such~~] the person. Credits or setoffs or both shall not be allowed to a producer or premium finance company for any amounts advanced to the insurer by the producer or premium finance company on behalf of, but in the absence of a payment by, the insured. An insured shall be obligated to pay, upon written demand by the liquidator, any unpaid, earned premium due the insurer [~~at the time of the declaration of insolvency~~] as shown on the records of the insurer.

~~[(b) Upon satisfactory evidence of a violation of this section, the commissioner may pursue either one or both of the following courses of action:~~

- ~~(1) Suspend or revoke or refuse to renew the licenses of such offending party or parties; or~~
- ~~(2) Impose a penalty of not more than \$1,000 for each and every act in violation of this section by said party or parties.~~

~~(c) Before the commissioner shall take any action as set forth in subsection (b), the commissioner shall give written notice to the person, company, association, or exchange accused of violating the law, stating specifically the nature of the alleged violation, and fixing a time and place, at least ten days thereafter, when a hearing on the matter shall be held. After such hearing, or upon failure of the accused to appear at such hearing, the commissioner, if the commissioner shall find such violation, shall impose such of the penalties under subsection (b) as the commissioner deems advisable.~~

~~(d) When the commissioner shall take action in any or all of the ways set out in subsection (b), the party aggrieved may appeal from said action to the circuit court of the first judicial circuit.]~~

(b) The circuit court of the first judicial circuit shall have original but not exclusive jurisdiction of all civil proceedings to hear and determine the rights of any producer, premium finance company, insured, liquidator, or any other person under this section. The circuit court of the first judicial circuit may provide that any and all proceedings arising under this section shall be referred to the judge presiding over the delinquency proceeding of the insurer. In lieu of a separate action for the collection of unpaid premiums, a producer, premium finance company, insured, or any other person who contests their liability for unpaid premiums may voluntarily submit their claim and dispute to the judge presiding over the delinquency proceeding of the insurer for summary disposition.

(c) The commissioner may take administrative action in accordance with applicable law against a producer, premium finance company, or any other person the commissioner believes is in violation of subsection (a) by suspending, revoking, or refusing to renew an insurance license, or by levying a civil penalty in an amount not to exceed \$1,000 for each violation.

(d) Any appeal of the commissioner's decision pursuant to subsection (c) shall be made pursuant to chapter 91 to the circuit court of the first judicial circuit.”



SECTION 7. Section 431:30-107, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The management committee shall have ~~[such]~~ the authority and duties ~~[as may be]~~ set forth in the bylaws, including but not limited to:

- (1) Managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission;
- (2) Establishing and overseeing an organizational structure within, and appropriate procedures for, the commission to provide for the creation of uniform standards and other rules, ~~[subject to approval by the full commission,]~~ receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a compacting state to opt out of a uniform standard; provided that a uniform standard shall not be submitted to the compacting states for adoption unless approved by two-thirds of the members of the management committee;
- (3) Overseeing the offices of the commission; and
- (4) Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations to advance the goals of the commission.”

SECTION 8. Section 431:30-119, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The commission shall notify the other compacting states of the ~~[withdrawing state’s intent to withdraw]~~ introduction of legislation repealing the compact within ten days of its receipt of notice thereof.”

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved June 17, 2005.)

## ACT 133

H.B. NO. 1462

A Bill for an Act Relating to the State of Hawaii.

*Be It Enacted by the Legislature of the State of Hawaii:*

### PART I

SECTION 1. Section 28-10.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department of the attorney general shall serve as the clearinghouse for information on financial and nonfinancial resources that may be available to assist in improving the delivery or coordination of services under, or the implementation of, programs of the criminal justice and juvenile justice systems and agencies and shall develop, update, and coordinate the implementation of a comprehensive statewide plan of programs and priorities for the improvement of law enforcement and criminal justice, including the prevention and control of juvenile delinquency. In addition, the department may:

- (1) Seek, apply for, and administer federal funding and other resources to enhance and expand the capabilities of the criminal and juvenile justice agencies;
- (2) Coordinate and assess information on a statewide basis for the development of policies to improve the criminal justice and juvenile justice systems and programs; ~~and~~
- (3) Administer state-funded criminal and juvenile justice programs as specifically directed by law or as may be implied through the appropriation of funds[-]; and
- (4) Administer programs for the prevention of sexual violence and the protection and treatment of victims of sexual violence.

## PART II

SECTION 2. Section 128D-32, Hawaii Revised Statutes, is amended by amending the definition of “prospective purchaser” to read as follows:

““Prospective purchaser” means a prospective owner, operator, tenant, developer, lender, or any other party who would not otherwise be liable under section 128D-6, prior to ~~conducting~~ a voluntary response action[-] being conducted.”

SECTION 3. Section 128D-34, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) For each site at which a requesting party chooses to conduct a voluntary response action, an application and \$1,000 nonrefundable processing fee shall be submitted. In the case of a requesting party that is a public or nonprofit agency, the director may reduce or waive this fee if the director deems it to be in the public interest.”

SECTION 4. Section 128D-36, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) At the completion of the voluntary response action, or at the termination of the agreement, except when the voluntary response action requires continuing oversight, the department shall provide a final accounting of the site-specific account and return the balance to the requesting party.”

SECTION 5. Section 128D-37, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department’s oversight costs shall be calculated at \$100 for each hour of staff time plus actual expenses incurred or one hundred twenty-five per cent of actual cost when contracting for oversight services. If a requesting party is a public or nonprofit agency, the director may reduce or waive this fee if the director deems it to be in the public interest.”

SECTION 6. Section 128D-38, Hawaii Revised Statutes, is amended to read as follows:

“~~[(f)]~~**§128D-38** Exempt positions. There ~~is~~ are established such positions as necessary to support the voluntary response program[-] and other voluntary activities pursuant to this chapter. These positions shall be appointed by the director without regard to chapter 76. These positions shall be included in any benefit program generally applicable to the officers and employees of the State.”

SECTION 7. Section 128D-39, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) If contamination is left on the site, the letter of completion shall [identify land use restrictions and any required management plan.] specify terms and conditions necessary to protect the public health and environment.”

SECTION 8. Section 128D-40, Hawaii Revised Statutes, is amended to read as follows:

“**§128D-40 Exemption from liability.** (a) To qualify for an exemption from liability, a requesting party that is also a prospective purchaser shall enter into a voluntary response agreement with the department prior to becoming the owner or operator of the property that is the subject of the agreement.

(b) Prospective purchasers who complete a voluntary response action and receive a letter of completion from the department [shall be] are exempt from future liability to the department for those specific hazardous substances, pollutants, contaminants, media, and land area addressed in the voluntary response action[. Parties who purchase property from an owner who] and specified in a letter of completion from the department. Prospective purchasers of property for which an owner has completed a voluntary response action and received a letter of completion from the department [shall be] are exempt from future liability to the department for those specific hazardous substances, pollutants, contaminants, media, and land area addressed in the voluntary response action and specified in the letter of completion issued to the party who conducted the voluntary response action.

(c) The exemption from future liability to the department referenced in subsection (b) [shall apply] applies only to those specific hazardous substances, pollutants, and contaminants cleaned up to a risk-based standard of not more than one total lifetime cancer risk per one million and only to the specific media and land area addressed in the voluntary response action; provided that the exemption only applies to the contamination which occurred prior to conducting the voluntary response action.

(d) A party who is exempt from future liability to the department under subsections (b) and (c) shall not be liable for claims for contribution or indemnity regarding matters addressed in the voluntary response action.

(e) The department reserves the right to take action consistent with this chapter against responsible parties.

(f) The exemption from liability shall not be effective:

- (1) If a letter of completion is acquired by fraud, misrepresentation, or failure to disclose material information; [or]
- (2) Where transactions were made for the purpose of avoiding liability under part I[-]; or
- (3) If a prospective purchaser fails to comply with the terms and conditions specified in the letter of completion.

(g) There shall be no exemption from liability for other laws or requirements.”

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect on July 1, 2005.

(Approved June 17, 2005.)

A Bill for an Act Relating to Highway Safety.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 286, Hawaii Revised Statutes, is amended by adding two new sections to part XI to be appropriately designated and to read as follows:

“**§286- Vehicle identification card.** (a) A motor carrier shall file with the director a form prescribed by the director containing a description of the commercial motor vehicle registered to the motor carrier. There shall be one form per vehicle. The form shall be filed when:

- (1) The original application for a safety clearance is filed with the director;
- (2) A new commercial motor vehicle is placed in service;
- (3) A commercial motor vehicle is withdrawn from service; and
- (4) New state license plates are issued for a commercial motor vehicle; provided that the form shall be filed not more than five days, including weekends and holidays, after the issuance of the plates.

(b) Upon the filing under subsection (a), the director shall issue a motor vehicle identification card for that commercial motor vehicle. The card shall contain information sufficient to identify the owner of the vehicle and other information deemed necessary by the director.

(c) A motor carrier shall inform the director, by filing a form prescribed by the director, of when a commercial motor vehicle registered to the motor carrier is disposed of, transferred, sold, or otherwise taken out of service by that carrier. The motor carrier shall surrender the vehicle identification card to the director with the filing of the form by affixing the card thereto.

**§286- Mudguards; protective devices.** (a) A commercial motor vehicle shall not be operated on the public highways unless the vehicle is equipped with fenders, covers, or other devices, including flaps or splash aprons, to minimize the spray or splash of water or mud to the rear of the vehicle.

(b) Violation of this section shall be subject to a fine of \$50, notwithstanding section 286-206.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved June 17, 2005.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Financial Disclosure Statements.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 84-17, Hawaii Revised Statutes, is amended as follows:

- 1. By amending subsection (b) to read:

“(b) The disclosure of financial interest required by this section shall be filed ~~[between]:~~

- (1) Between January 1 and May 31 of each year ~~[or within];~~
- (2) Within thirty days of one’s election or appointment to a state position enumerated in subsection (c); or
- (3) Within thirty days of separation from a state position if a prior financial disclosure statement for the position was not filed within the one hundred eighty days preceding the date of separation;

provided that candidates for state elective offices or the constitutional convention shall file the required statements no later than twenty days prior to the date of the primary election for state offices or the election of delegates to the constitutional convention.”

2. By amending subsection (f) to read:

“(f) Candidates for state elective offices, including candidates for election to the constitutional convention, shall only be required to disclose their own financial interests. The disclosures of financial interests of all other persons designated in subsection (c) shall state, in addition to the financial interests of the person disclosing, the financial interests of the person’s spouse and dependent children. All disclosures shall include:

- (1) The source and amount of all income of \$1,000 or more received, for services rendered, by the person in the person’s own name or by any other person for the person’s use or benefit during the preceding calendar year and the nature of the services rendered; provided that information that may be privileged by law or individual items of compensation that constitute a portion of the gross income of the business or profession from which the person derives income need not be disclosed;
- (2) The amount and identity of every ownership or beneficial interest held during the disclosure period in any business ~~[incorporated, regulated, or licensed to carry on business in the State]~~ having a value of \$5,000 or more or equal to ten per cent of the ownership of the business and, if the interest was transferred during the disclosure period, the date of the transfer; provided that an interest in the form of an account in a federal or state regulated financial institution, an interest in the form of a policy in a mutual insurance company, or individual items in a mutual fund or a blind trust, if the mutual fund or blind trust has been disclosed pursuant to this paragraph, need not be disclosed;
- (3) Every officership, directorship, trusteeship, or other fiduciary relationship held in a business during the disclosure period, the term of office and the annual compensation;
- (4) The name of each creditor to whom the value of \$3,000 or more was owed during the disclosure period and the original amount and amount outstanding; provided that debts arising out of retail installment transactions for the purchase of consumer goods need not be disclosed;
- (5) The [tax map key number and] street address[, if any,] and, if available, the tax map key number, and the value of any real property [in the State] in which the person holds an interest whose value is \$10,000 or more, and, if the interest was transferred or obtained during the disclosure period, a statement of the amount and nature of the consideration received or paid in exchange for such interest, and the name of the person furnishing or receiving the consideration; provided that disclosure shall not be required of the street address and tax map key number of the person’s residence;

- (6) The names of clients personally represented before state agencies, except in ministerial matters, for a fee or compensation during the disclosure period and the names of the state agencies involved; and
- (7) The amount and identity of every creditor interest in an insolvent business held during the disclosure period having a value of \$5,000 or more.’’

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on January 1, 2006.

(Approved June 17, 2005.)

**ACT 136**

S.B. NO. 693

A Bill for an Act Relating to Charitable Gift Annuities.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 431:1-204, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) For the purposes of this code, the transacting of life insurance includes the granting of annuities and endowment benefits, except for annuities that are provided under a charitable gift annuity agreement with a donor and issued by a nonprofit educational foundation or a nonprofit organization that has met the requirements of paragraphs (1) to (4).

A nonprofit educational foundation or nonprofit organization issuing charitable gift annuities shall:

- (1) Meet the following requirements:
  - (A) The foundation or organization shall have conducted business in the form of program services or fundraising activities in the State continuously for at least ten years;
  - (B) The foundation or organization shall maintain a net worth in the State of not less than \$200,000 in cash, cash equivalents, or publicly traded securities, exclusive of the assets funding any annuity; and
  - (C) The foundation or organization shall have filed an annual statement that certifies compliance with this subsection, on forms that may be prescribed by the department of the attorney general[;]. Each foundation or organization shall file its annual statement with the attorney general on or before March 15 of each year;
- (2) Maintain segregated assets in a financial institution equal to at least the sum of the reserves on its outstanding charitable gift annuity agreements, calculated in accordance with ~~[accepted actuarial standards,<sup>1</sup>]~~ mortality tables and discount rates to be determined by the commissioner of insurance, and a surplus of ten per cent of the reserves or the amount of \$100,000, whichever is higher. The assets shall be segregated as separate and distinct funds independent of all other funds and shall not be applied toward the payment of the debts and obligations of the foundation or organization, other than with respect to the annuity agreements. The segregated assets shall not be considered in determin-

ing whether the foundation or organization meets the net worth requirement of paragraph (1)(B). In determining the fund reserves, a deduction shall be made, and no surplus shall be required, for all or any portion of an annuity risk that is lawfully reinsured by an authorized [~~reinsurer;~~] insurer;

- (3) Invest and manage assets as would a prudent investor, taking into account the purposes, terms, and distribution requirements expressed in its governing instrument. To satisfy this standard, the fiduciary shall exercise reasonable care, skill, and caution; and
- (4) Prominently state on the first page of a charitable gift annuity agreement that the agreement is not insurance under the laws of the State, is not subject to regulation by the insurance division, and is not protected by any state guaranty fund.

Upon the failure of a nonprofit educational foundation or nonprofit organization to comply with any of the requirements of paragraphs (1) to (4), a charitable gift annuity agreement issued by the foundation or organization shall be deemed life insurance and subject to the provisions of this code governing life insurance.

For the purposes of this subsection:

“Charitable gift annuity agreement” means a contract under which an individual transfers property to a charity, conditioned upon the right to receive a specific sum of money for life.

“Nonprofit organization” means an organization that has been granted tax exempt status as a charitable organization by the Internal Revenue Service pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, as amended.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 17, 2005.)

#### Note

1. Comma should be stricken.

## ACT 137

H.B. NO. 20

A Bill for an Act Relating to the University of Hawaii.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 12 of Act 321, Session Laws of Hawaii 1986; as amended by Act 283, Session Laws of Hawaii 1987; as amended by Act 371, Session Laws of Hawaii 1989; as amended by Act 163, Session Laws of Hawaii 1991; as amended by Act 314, Session Laws of Hawaii 1993; as amended by Act 8, Special Session Laws of Hawaii 1993, as amended by Act 180, Session Laws of Hawaii 1997; and as amended by Act 115, Session Laws of Hawaii 1998, is amended to read as follows:

“SECTION 12. This Act shall take effect on July 1, 1986, and be repealed as of [~~June 30, 2005;~~] June 30, 2006; provided that on repeal sections 40-1, 40-2, 40-4, 40-6<sup>1</sup> and 40-81, Hawaii Revised Statutes, are reenacted in the form in which they read on June 30, 1986, and section 40-58, Hawaii Revised Statutes, is reenacted in the form in which it read on June 30, 1991.”

## ACT 138

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on June 29, 2005.

(Approved June 20, 2005.)

### Note

1. Prior to amendment, a comma appeared here.

## ACT 138

H.B. NO. 19

A Bill for an Act Relating to University Projects and Authorizing the Issuance of Revenue Bonds for Housing Units.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 306, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§306- Support facility for variable rate revenue bonds.** If revenue bonds issued pursuant to this chapter are issued bearing interest at a rate or rates that vary from time to time and with a right of holders to tender the revenue bonds for purchase, the board may contract for a support facility or facilities and remarketing arrangements that are required to market the revenue bonds to the greatest advantage of the board and the university, upon terms and conditions as the board deems necessary and proper.

The board may enter into contracts or agreements with an entity or entities providing a support facility; provided that any contract or agreement shall provide, in essence, that any amount due and owing by the board under the contract or agreement on an annual basis shall be payable from the revenue of the university; provided further that any obligation issued or arising pursuant to the terms of the contract or agreement in the form of revenue bonds, notes, or other evidences of indebtedness shall only arise if:

- (1) Moneys or securities have been irrevocably set aside for the full payment of a like principal amount of revenue bonds issued pursuant to this chapter; or
- (2) A like principal amount of the issue or series of revenue bonds to which the support facility relates are held in escrow by the entity or entities providing the support facility.”

SECTION 2. Section 306-1, Hawaii Revised Statutes, is amended by amending the definitions of “board” or “board of regents” and “revenue of the university” to read:

““Board” or “board of regents” means the board of regents of the University of Hawaii, which[, for the purposes of this chapter,] is hereby declared to be a [political] public corporation [within the meaning of that term as used in section 562(d) of title 48 of the United States Code].

“Revenue of the university” means all income, receipts, and revenues of whatever nature received by the university, or which it is entitled to receive[, as an owner, operator, and manager of the university, including legislative appropriations of special and revolving funds, other than [(1)] general appropriations[, (2) taxes, (3) tuition fees, and (4)] and gifts the terms of which preclude their being used for



payment of the cost of construction, cost of maintenance, or both, of a university project or university system.”

SECTION 3. Section 306-2, Hawaii Revised Statutes, is amended to read as follows:

“**§306-2 Powers of the board.** In addition to the powers ~~[which]~~ that it now possesses, the board of regents shall have the power to:

- (1) Construct and maintain university projects, including a university project included or to be in a university system;
- (2) Combine two or more university projects, now or hereafter existing on any one or more of the areas of any one or more of the educational institutions under the control of or governed by the board, into a university system or systems, and to maintain such system or systems;
- (3) Prescribe and collect rents, fees, and charges for the use of or services furnished by any university project or the facilities thereof;
- (4) With the approval of the governor, issue revenue bonds, to finance, in whole or in part the cost of construction, or maintenance, or both, of any university project, including a university project included or to be included in a university system~~;~~, and reserves;
- (5) Pledge to the punctual payment of ~~[such]~~ any revenue bonds and interest thereon, the revenue of the university project or projects for the construction or maintenance of which the bonds have been issued, or the revenue of the university system in which ~~[such]~~ a university project is to be included, and the revenue of other or all university projects or university systems, in an amount sufficient to pay such bonds and interest as the same become due and to create and maintain reasonable reserves therefor; and
- (6) Advance such moneys of the university, not otherwise required, as are necessary to pay the expenses incurred in making the preparations for the initial issuance of revenue bonds under this chapter, and to take any other action necessary or proper for carrying into execution and administering this chapter, including providing for the full utilization of university projects and university systems in every way conducive to the furtherance of any or all of the purposes of the university.”

SECTION 4. Section 306-4, Hawaii Revised Statutes, is amended to read as follows:

“**§306-4 Revenue bonds.** (a) Revenue bonds shall be issued in the name of the board of regents, may be in one or more series, may be in a denomination or denominations, may bear a date or dates, may mature at a time or times not exceeding fifty years from their respective dates, may be payable at a place or places within or without the State, may carry registration privileges ~~[as to principal alone or as to both principal and interest]~~, may be subject to terms ~~[or]~~ and conditions of redemption [with] or to tenders for purchase or [without premium,] to purchase prior to the stated maturity at the option of the board, the holder, or both, may be executed in a manner, and may contain terms, covenants, and conditions, and may be in a form~~[, either coupon or registered with privilege of exchange from one form to another, that]~~ and printed in the manner, including typewritten, that the resolution authorizing the issuance of the bonds[;] or subsequent resolutions may provide.

~~[Revenue bonds may be sold at private sale to the United States, or any agency, instrumentality, or corporation thereof, to the State or any political subdivision, agency, instrumentality, or corporation thereof, or to any person or group of~~

~~persons offering to purchase all or a major portion of a particular issue or series. Unless sold at private sale as herein provided, revenue bonds shall be sold at public sale after public notice of the sale given at least five days prior to the date of the sale, and the notice shall be made statewide and in a financial newspaper published in any of the cities of New York, Chicago, or San Francisco. The revenue bonds shall be sold for not less than ninety-eight per cent of the principal amount thereof. Pending the preparation of definitive revenue bonds, interim receipts or temporary bonds may be issued and delivered to the purchasers of the bonds in a form and containing provisions that the board may determine. Revenue bonds, interim receipts, and temporary bonds shall be fully negotiable within the meaning of and for all the purposes of the Uniform Commercial Code, chapter 490.~~

~~It shall be legal for the State and any of its political subdivisions, or any political or public corporation, including the employees' retirement system of the State, or any instrumentality of the State, or any insurance company or building and loan association, or any savings bank or trust company, or any bank or other financial institution operating under the laws of this State, or for any personal representative, guardian, trustee, or other fiduciary, or any educational, charitable, or eleemosynary institution, to invest their funds, and moneys in their custody in revenue bonds issued under this chapter.]~~

(b) The board may acquire insurance policies and enter into banking arrangements upon terms and conditions that the board deems necessary or desirable, at the time of delivery of an issue of revenue bonds or a later date as the board deems in the best interests of the university, including but not limited to contracting for support facility or facilities as permitted in section 306- , and contracting for interest rate swaps, swap options, interest rate floors, and other similar contracts to hedge or reduce the amount or duration of payment, rate, spread, or similar risk, or to reduce the cost of borrowing when used in conjunction with revenue bonds issued pursuant to this chapter.

(c) The board may make arrangements necessary for the sale of each issue of revenue bonds or part that are issued pursuant to this chapter, including but not limited to arranging for the preparation and printing of the revenue bonds, the official statement, and any other documents or instruments required for the issuance and sale of revenue bonds and retaining financial, accounting, and legal consultants all upon terms and conditions as the board deems advisable and in the best interests of the State and the university. The board may offer the revenue bonds at competitive sale or may negotiate the sale of the revenue bonds to any person or group of persons, to the federal government or any board, agency, instrumentality, or corporation thereof, to the employees' retirement system of the State, to any political subdivision of the State or any board, agency, instrumentality, public corporation, or other governmental organization of the State or any political subdivision thereof.

The sale of the revenue bonds by the board by negotiation shall be at the price or prices, and upon the terms and conditions, and the revenue bonds shall bear interest at such rate or rates, or varying rates, determined from time to time in the manner as the board shall approve.

The sale of the revenue bonds by the board at competitive sale shall be at the price or prices, and upon the terms and conditions, and the revenue bonds shall bear interest at the rate or rates, or such varying rates, determined from time to time in the manner as specified by the successful bidder. The revenue bonds shall be sold in the manner provided in section 39-55.

(d) The board may delegate the responsibility for the sale and the fixing of the terms and details of revenue bonds, and any other determinations or actions as may be provided by resolution of the board, to the chairperson, the president, or other designated officer.

(e) All public officers and bodies of the State, all political subdivisions, all insurance companies and associations, all banks, savings banks, and savings institutions, including building or savings and loan associations, all credit unions, all trust companies, all personal representatives, guardians, trustees, and all other persons and fiduciaries in the State who are regulated by law as to the character of their investment may legally invest funds within their control and available for investment in revenue bonds issued under this chapter. The purpose of this subsection is to authorize any person, firm, corporation, association, political subdivision, body, or officer, public or private, to use any funds owned or controlled by them, including (without prejudice to the generality of the foregoing) sinking, insurance, investment, retirement, compensation, pension, trust funds, and funds held on deposit, for the purchase of any revenue bonds issued under this chapter.”

SECTION 5. Section 306-6, Hawaii Revised Statutes, is amended to read as follows:

**“§306-6 Validity of bonds.** ~~[Revenue bonds issued under this chapter shall bear the signatures of the chairperson and executive officer of the board of regents, either of which signatures may be a lithographed or engraved facsimile of such signature so long as at least one of said signature is a manual signature, and shall be sealed with the seal of the board or in lieu thereof shall bear a lithographed or engraved facsimile of such seal. The coupons pertaining to the revenue bonds shall be executed with the lithographed or engraved facsimile signatures of the chairperson and executive officer of the board.]~~ Revenue bonds bearing the signature of officers in office at the date of the signing thereof shall be valid and binding obligations, notwithstanding that, before the delivery thereof and payment therefor, any or all of the persons whose signatures appear thereon shall have ceased to be officers. The validity of the bonds shall not be dependent on nor affected by the validity or regularity of any proceedings relating to the construction or maintenance of the university project or projects or university system or systems for which the bonds were issued. The resolution authorizing the issuance of revenue bonds may provide that the bonds shall contain a recital that they are issued pursuant to this chapter, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.”

SECTION 6. Section 306-8, Hawaii Revised Statutes, is amended to read as follows:

**“§306-8 Payment and security of revenue bonds; revenue bonds not a debt of the State.** Revenue bonds issued under this chapter shall be payable ~~[solely]~~ from and secured ~~[solely]~~ by the revenues of the university ~~[project or projects or university system or systems]~~ pledged to the payment thereof, and ~~[such]~~ those revenues shall be applied to ~~[such]~~ the payment in accordance with ~~[the provisions of]~~ this chapter and the resolution or resolutions authorizing the issuance of the revenue bonds. No holder or holders of any revenue bonds issued under this chapter shall ever have the right to compel any exercise of the taxing power of the State to pay ~~[such]~~ the bonds~~;~~ or interest thereon. Each revenue bond shall recite in substance that the bond, including interest thereon, is payable ~~[solely]~~ from and secured ~~[solely]~~ by the ~~[revenue]~~ revenues pledged to the payment thereof, and that the bond does not constitute ~~[an indebtedness of the State within the meaning of any limitation of law.]~~ a general or moral obligation or charge upon the general fund of the State and the full faith and credit of the State are not pledged to the payment of the principal and interest.”

SECTION 7. Section 306-10, Hawaii Revised Statutes, is amended to read as follows:

~~“§306-10 University revenue-undertakings fund. [The director of finance shall establish as a special deposit in the treasury of the State, a special or revolving fund into which all revenues received from all university projects or university systems constructed, maintained, or both, by the board under this chapter shall be paid, which special or revolving fund] There is hereby created a special fund to be administered by the university and shall be known as the university revenue-undertakings fund[.], into which all revenue derived from a university project or university system shall be deposited. The university may deposit other revenue of the university into the fund. At the direction of the board, there may be established such accounts in the university revenue-undertakings fund as required by the resolution or resolutions authorizing revenue bonds. In the event that revenue bonds are issued under this chapter payable from the revenues of a university parking unit or the revenues of a university system [which] that includes a university parking unit, the board in the resolution or resolutions authorizing such revenue bonds may direct that all or any part of the moneys required by sections 308-2 and 308-3 to be paid into the university parking revolving fund created by [said] section 308-2 shall be deposited in the university revenue-undertakings fund in lieu of being deposited in the university parking revolving fund, and thereafter all such moneys or such part thereof as the board has directed shall be deposited in the university revenue-undertakings fund in lieu of being deposited in the university parking revolving fund. All moneys in the university revenue-undertakings fund are appropriated and shall be applied in accordance with the provisions of the resolution or resolutions of the board authorizing the issuance of revenue bonds under this chapter:~~

- (1) To provide for all costs of construction, operation, repair, and maintenance of university projects or university systems, including reserves therefor;
- (2) To pay when due all revenue bonds and interest thereon, for the payment of which the revenue is or has been pledged, charged, or otherwise encumbered, including reserves therefor;
- (3) To reimburse the university for all moneys advanced to pay the expenses incurred in making the preparation for the initial issuance of revenue bonds under this chapter;
- (4) To reimburse the general fund of the State for all bond requirements for general obligation bonds [which] that are or shall have been issued for a university project or university system, or to refund any of [such] those general obligation bonds, except insofar as [such] the obligation of reimbursement has been or shall be cancelled by the legislature, [such] the bond requirements being the interest on term and serial bonds, sinking fund for term bonds, and principal of serial bonds maturing the following year;
- (5) To provide a reserve for betterments and improvements to, and renewals and replacements of, university projects or university systems. If adequate provision has been made for all the foregoing purposes, and if permitted by the covenants in the resolution or resolutions authorizing the issuance of revenue bonds under this chapter, any surplus moneys remaining in the university revenue-undertakings fund at the end of any fiscal year may be expended by the board in subsequent years in furtherance of any or all of the purposes of the university.

~~[The comptroller of the State shall open and keep in the comptroller's books a separate and special account of the university revenue-undertakings fund which~~

shall be known as the university revenue undertakings fund account and which shall at all times show the exact condition thereof, including reserves.

~~Moneys appropriated as hereinabove provided shall be payable by the director of finance, upon warrants issued by the comptroller, upon vouchers approved by the board or its duly authorized agent.]”~~

SECTION 8. Section 306-11, Hawaii Revised Statutes, is amended to read as follows:

**“§306-11 University project, university system, bonds exempt from taxation.** The property and revenue of any university project or university system shall be exempt from all [~~state, county, and municipal~~] taxation and assessments. Revenue bonds issued under this chapter[;] and all income therefrom shall be exempt from all [~~state,~~] taxation by the State, any county, [and municipal taxation] or other political subdivision, except inheritance, transfer, and estate taxes.”

SECTION 9. Section 306-12, Hawaii Revised Statutes, is amended to read as follows:

**“§306-12 Powers herein, additional to other powers.** The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other [~~general, special, or local~~] law[~~.-Insofar~~] concerning any university project, university system, or any combination, or the issuance of revenue bonds. Revenue bonds may be issued pursuant to this chapter for those purposes notwithstanding any other law to the contrary that provides for the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of a similar undertaking or the establishment, maintenance, or extension of a similar university project, university system, or any combination thereof, or the issuance of revenue bonds, without regard to the requirements, restrictions, limitations, or other law. Except as expressly provided in this chapter, insofar as this chapter is inconsistent with any other [general, special, or local] law, this chapter shall be controlling.”

SECTION 10. There is hereby authorized the issuance of revenue bonds under chapter 306, Hawaii Revised Statutes (HRS), in the principal amount of \$100,000,000 to finance in whole or in part the cost of construction, or the cost of maintenance, or both, of any university project, as defined in chapter 306, HRS, constituting one or more university housing units, as defined in chapter 306, HRS, whether or not a part of a university system, as defined in chapter 306. The proceeds of the revenue bonds and any premiums or interest derived from bonds issued pursuant to this section are appropriated for fiscal year 2005-2006 for the construction and repair of university housing units; provided that the construction of new housing units at the University of Hawaii at Manoa campus shall only be undertaken on sites currently used for student housing.

SECTION 11. Whenever revenue bonds authorized by this Act are issued, the board of regents is authorized to apply the proceeds of those revenue bonds to the purpose for which the bonds are issued.

SECTION 12. The appropriations made for the construction and repair of university housing units authorized in this Act shall not lapse at the end of the fiscal period for which the appropriation or authorization is made; provided that all appropriations that are unencumbered as of June 30, 2010, shall lapse as of that date.

**ACT 139**

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 14. This Act shall take effect upon its approval; provided that section 10 shall take effect on July 1, 2005.

(Approved June 20, 2005.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 139**

S.B. NO. 791

A Bill for an Act Relating to a Continuum of Health Care Settings.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds the need to ensure the availability of appropriate settings for persons recovering from substance abuse and believes it appropriate to establish a continuum of these settings within the community that would be consistent with current laws. This Act clarifies current law relating to settings for persons requiring therapeutic or rehabilitative services and care, including persons recovering from substance abuse.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:<sup>1</sup>

**“§321- Special treatment facilities.** (a) All special treatment facilities shall be licensed to ensure the health, safety, and welfare of the individuals placed therein.

(b) The director shall adopt rules, in accordance with chapter 91, regarding special treatment facilities that shall be designed to:

(1) Provide a therapeutic residential program for care, diagnosis, treatment, or rehabilitation for socially or emotionally distressed persons, mentally ill persons, persons suffering from substance abuse, and developmentally disabled persons. Special treatment facilities shall include a short-term crisis residential program or a long-term residential treatment program;

(2) Comply with applicable federal laws and regulations; and

(3) Provide penalties for the failure to comply with any rule.

(c) For the purposes of this section:

“Long-term residential” means a residential treatment program for persons whose duration of stay is thirty days or longer.

“Short-term crisis residential” means a residential treatment program for persons who are in crisis and whose duration of stay is less than thirty days.

“Socially or emotionally distressed person” means an individual who is experiencing psychiatric symptomatology that may be acute or chronic in nature, which requires therapeutic or rehabilitative services.

**§321- Therapeutic living programs.** (a) All therapeutic living programs shall be licensed to ensure the health, safety, and welfare of the individuals placed therein.

(b) The director shall adopt rules regarding therapeutic living programs in accordance with chapter 91 that shall be designed to:

- (1) Comply with applicable federal laws and regulations; and
  - (2) Provide penalties for the failure to comply with any rule.
- (c) For the purposes of this section, “therapeutic living program” means a supervised living arrangement that provides mental health, substance abuse services, or supportive services for individuals or families who do not need the structure of a special treatment facility and are transitioning to independent living. The program aids residents in meeting basic needs and provides supportive services through a required service plan.”

SECTION 3. Section 46-4, Hawaii Revised Statutes, is amended as follows:  
1. By amending subsection (e) to read:

“(e) No permit shall be issued by a county agency for the operation of a halfway house, a clean and sober home, or a drug rehabilitation home unless a public informational meeting is first held in the affected community. The State shall provide notification and access to relevant information, as required, under chapter 846E.

A clean and sober home shall be considered a residential use of property and shall be a permitted or conditional use in residentially designated zones, including but not limited to zones for single-family dwellings.”

2. By adding two new definitions to subsection (f) to be appropriately inserted and to read:

““Clean and sober home” means a house that is operated pursuant to a program designed to provide a stable environment of clean and sober living conditions to sustain recovery and that is shared by unrelated adult persons who:

- (1) Are recovering from substance abuse;
- (2) Share household expenses; and
- (3) Do not require twenty-four-hour supervision, rehabilitation, or therapeutic services or care in the home or on the premises. The home shall meet all applicable laws, codes, and rules of the counties and State.

“Drug rehabilitation home” means:

- (1) A residential treatment facility that provides a therapeutic residential program for care, diagnosis, treatment, or rehabilitation for socially or emotionally distressed persons, mentally ill persons, persons suffering from substance abuse, and developmentally disabled persons; or
- (2) A supervised living arrangement that provides mental health services, substance abuse services, or supportive services for individuals or families who do not need the structure of a special treatment facility and are transitioning to independent living;

provided that drug rehabilitation homes shall not include halfway houses or clean and sober homes.”

SECTION 4. Section 46-15.39, Hawaii Revised Statutes, is repealed.

SECTION 5. The amendments in this Act, including the repeal of section 46-15.39, Hawaii Revised Statutes, shall not apply to any halfway house, clean and sober home, or any other setting that assists individuals in transition to live independently that is in existence prior to the effective date of this Act.

SECTION 6. Notwithstanding the repeal of section 46-15.39, Hawaii Revised Statutes, any drug rehabilitation home established pursuant to, and in compliance with, section 46-15.39, Hawaii Revised Statutes, shall continue to be a

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permitted use in residentially designated zones, including zones for single family dwellings.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 8. This Act shall take effect upon its approval.

(Approved June 21, 2005.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 140

S.B. NO. 761

A Bill for an Act Relating to Mental Health.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 431M-1, Hawaii Revised Statutes, is amended by amending the definition of “serious mental illness” to read as follows:

““Serious mental illness” means a mental disorder consisting of at least one of the following: schizophrenia, schizo-affective disorder, [~~and~~] bipolar types I and II, obsessive compulsive disorder, dissociative disorder, delusional disorder, and major depression, as defined in the most recent version of the Diagnostic and Statistical Manual of the American Psychiatric Association[;] and which is of sufficient severity to result in substantial interference with the activities of daily living.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 21, 2005.)

## ACT 141

S.B. NO. 1394

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The department of education provides important health services to Hawaii’s school-aged children, including:

- (1) Speech/language therapy;
- (2) Occupational/physical therapy;
- (3) Health-related transportation;
- (4) Mental health and other behavioral services;
- (5) Counseling;
- (6) Diagnostic and assessment services; and
- (7) Nursing and health aide services.



The purpose of this Act is to authorize the department of education to establish and implement a federal revenue maximization program for all medicaid-eligible health services that it provides to Hawaii's school-aged children.

**SECTION 2.** (a) The department of education, in collaboration with the department of human services and the department of health, shall establish a federal revenue maximization program to:

- (1) Identify medicaid-eligible health services provided through the department of education to students, directly or through contracted providers; and
- (2) Submit claims for federal reimbursement for such services through the department of human services.

In establishing the federal revenue maximization program, the superintendent of education and the director of human services shall execute a memorandum of agreement to develop and implement a federal revenue maximization program for medicaid-eligible school health federal reimbursement.

The department of education may contract with a third party to administer this program. The third-party contract shall be established either at no cost to the State or on a contingency-fee basis with no up-front costs to the State, including but not limited to costs to train staff, adapt data collection systems, and comply with the federal Health Insurance Portability and Accountability Act.

(b) The federal revenue maximization program shall identify, at a minimum:

- (1) The service recipient and the recipient's medicaid number;
- (2) The service provider (either the department of education in total or by contracted provider);
- (3) The services received, including when, where, and for what diagnosis; and
- (4) Billing charges for the services provided.

(c) The department of health, in collaboration with the department of human services and the department of education, shall identify sources of funding, including medicaid-eligible health services and reimbursable health services, to establish and provide school-based or school-linked health services at schools in federally-designated underserved areas.

(d) The department of education shall:

- (1) Procure and contract for the development, implementation, and maintenance of the federal revenue maximization program, including any required information technology system or interfaces with the department of education's existing system;
- (2) Claim the maximum reimbursement allowable under medicaid for both administrative costs and school health services arising on and after January 1, 2006; and
- (3) File retroactive claims for the preceding eight quarters, as permitted by available documentation or other back-up information that can be reasonably obtained.

(e) The department of human services and the department of health shall provide technical assistance and support to the department of education in its efforts to obtain federal medicaid school-health reimbursements under this Act.

**SECTION 3.** The department of education shall submit to the legislature quarterly reports that include:

- (1) The amount of medicaid federal reimbursement received for federal fiscal years 2004-2005 to 2009-2010;
- (2) The amount of additional funding that has been secured;
- (3) The amount of claims pending;

## ACT 142

- (4) The amount of additional federal funding that is projected to be secured over the next five years; and
- (5) Plans for the reinvestment of additional federal funds to expand needed services to the state's children.

The department of education shall also submit an annual report to the legislature no later than twenty days prior to the convening of each of the regular sessions of 2006 to 2010.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 21, 2005.)

## ACT 142

S.B. NO. 1419

A Bill for an Act Relating to Domestic Violence.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 235-102.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Notwithstanding any law to the contrary, any individual whose state income tax refund for any taxable year is \$5 or more may designate \$5 of the refund to be paid over as follows:

- (1) One-third to the Hawaii children's trust fund under section 350B-2; and
- (2) Two-thirds to be divided equally among:
  - (A) The domestic violence ~~[prevention]~~ and sexual assault special fund under the department of health in section 321-1.3;
  - (B) The spouse and child abuse special account under the department of human services in section 346-7.5; and
  - (C) The spouse and child abuse special account under the judiciary in section 601-3.6.

When designated by a taxpayer submitting a state income tax return to the department, the department of budget and finance shall allocate the moneys among the several funds as provided in this subsection. In the case of a joint return of a husband and wife having a state income tax refund of \$10 or more, each spouse may designate that \$5 be paid over as provided in this subsection. The director of taxation shall revise the individual state income tax form to allow the designation of contributions pursuant to this subsection on the face of the tax return and immediately above the signature lines. If no designation was made on the original tax return when filed, a designation may be made by the individual on an amended return filed within twenty months and ten days after the due date for the original return for such taxable year. A designation once made, whether by an original or amended return, may not be revoked.”

SECTION 2. Section 321-1.3, Hawaii Revised Statutes, is amended to read as follows:

“**§321-1.3 Domestic violence ~~[prevention]~~ and sexual assault special fund.** (a) There is established within the state treasury a special fund to be known as the domestic violence ~~[prevention]~~ and sexual assault special fund to be administered and expended by the department of health.

(b) The moneys in the special fund shall be reserved for use by the department of health for [staff] programs and grants or purchases of service consistent with chapter 42D that support or provide domestic violence and sexual assault intervention or prevention as authorized by law. Moneys in the special fund shall be used for new or existing programs and shall not supplant any other moneys previously allocated to these programs.

(c) Fees remitted pursuant to section 338-14.5, income tax remittances allocated under section 235-102.5, interest and investment earnings attributable to the moneys in the special fund, and grants, donations, and contributions from private or public sources for the purposes of the fund, shall be deposited into the special fund.

(d) The department of health shall submit an annual report to the legislature no later than twenty days prior to the convening of each regular session[;] providing [an] the following:

- (1) An accounting of the receipts of, and expenditures from, the special fund[-]; and
- (2) Recommendations on how to improve services for victims of domestic violence and sexual assault.”

SECTION 3. Section 338-14.5, Hawaii Revised Statutes, is amended to read as follows:

“**§338-14.5 Copies of certificate; fees.** The fees for certified copies of birth, marriage, divorce, or death certificates issued by the department of health shall consist of \$10 for the first copy issued and \$4 for each copy issued thereafter. These fees shall be collected for each single request for certified copies. All fees received for the issuance of certified copies of birth, marriage, divorce, or death certificates shall be remitted to the director of health. Upon the receipt of remittances under this section, the director of health shall deposit:

- (1) \$1 for each certified copy to the credit of the spouse and child abuse special account established under section 346-7.5;
- (2) \$1 for each certified copy to the credit of the spouse and child abuse special account established under section 601-3.6;
- (3) \$1 for each certified copy to the credit of the domestic violence [prevention] and sexual assault special fund established under section 321-1.3;
- (4) \$1 for each certified copy to the credit of the vital statistics improvement special fund established under section 338-14.6; and
- (5) The remainder of the fee for each certified copy to the credit of the state general fund.”

SECTION 4. (a) The department of health shall work with providers of services to victims of domestic violence to develop a five-year strategic plan to reduce the incidence of domestic violence and to increase support to victims of domestic violence. The department shall submit a report on the plan to the legislature no later than twenty days prior to the convening of the regular session of 2006. The report shall detail how the plan is being implemented to achieve the purpose of this section.

(b) The department of health shall work with the sexual violence strategic planning groups to implement the recommendations of the January 2005 strategic plan entitled “Shaping Tomorrow, The Future of Sexual Violence Programs in Hawaii” that was presented by the sexual violence strategic planning group. The department of health shall submit a report to the legislature no later than twenty days prior to the convening of the 2006 regular session detailing the progress made with implementation of the recommendations of the strategic plan.

**ACT 143**

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 21, 2005.)

**ACT 143**

S.B. NO. 27

A Bill for an Act Making an Appropriation for the Kapiolani Child At-Risk Evaluation Program.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Kapiolani Health System reports that over two thousand five hundred children are abused and neglected each year in Hawaii. The Kapiolani Child At-Risk Evaluation Program is dedicated to helping those children. Its mission is to provide comprehensive, coordinated, and compassionate forensic health services to children who are victims or suspected victims of abuse and neglect. The Kapiolani Child At-Risk Evaluation Program offers pre-placement medical evaluations and comprehensive health evaluations for children entering foster care and forensic medical evaluations for children who are being investigated for allegations of abuse and neglect.

The purpose of this Act is to appropriate funds to Kapiolani Medical Center for Women and Children for the Kapiolani Child At-Risk Evaluation Program.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$200,000, or so much thereof as may be necessary for fiscal year 2005-2006, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Kapiolani Medical Center for Women and Children with the intent to fund the Kapiolani Child At-Risk Evaluation Program.

The sums appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2005.

(Approved June 21, 2005.)

**ACT 144**

H.B. NO. 278

A Bill for an Act Relating to Victim Restitution.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 351-62.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The court shall impose a compensation fee upon every defendant who has been convicted or who has entered a plea under section 853-1 and who is or will be able to pay the compensation fee. The amount of the compensation fee shall be commensurate with the seriousness of the offense as follows:

- (1) Not less than [~~\$100~~] \$105 nor more than [~~\$500~~] \$505 for a felony;
- (2) [~~\$50~~] \$55 for a misdemeanor; and

(3) [~~\$25~~] \$30 for a petty misdemeanor.

The compensation fee shall be separate from any fine that may be imposed under section 706-640 and shall be in addition to any other disposition under this chapter; provided that the court shall waive the imposition of a compensation fee if the defendant is unable to pay the compensation fee. Moneys from the compensation fees shall be deposited into the crime victim compensation special fund under section 351-62.5.”

SECTION 2. Section 706-605, Hawaii Revised Statutes, is amended by amending subsection (6) to read as follows:

“(6) The court shall impose a compensation fee upon every person convicted of a criminal offense pursuant to section 351-62.6; provided that the court shall waive the imposition of a compensation fee if it finds that the defendant is unable to pay the compensation fee. When a defendant is ordered to make payments in addition to the compensation fee, payments by the defendant shall be made in the following order of priority:

- (a) Restitution;
- (b) Crime victim compensation fee;
- (c) Probation services fee;
- (d) Other fees; and
- (e) Fines.”

SECTION 3. This Act shall apply to any defendant who is convicted or who enters a plea under section 853-1, Hawaii Revised Statutes, after the effective date of this Act.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 22, 2005.)

## ACT 145

S.B. NO. 121

A Bill for an Act Relating to Brewpub Licenses.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 281-31, Hawaii Revised Statutes, is amended by amending subsection (o) to read as follows:

“(o) Class 14. Brewpub licenses. A brewpub licensee:

- (1) Shall manufacture not more than ten thousand barrels of malt beverages on the licensee’s premises during the license year;
- (2) May sell malt beverages manufactured on the licensee’s premises for consumption on the premises;
- (3) May sell malt beverages manufactured by the licensee in brewery-sealed packages to class 3, wholesale dealer licensees pursuant to conditions imposed by county planning and public works departments;
- (4) May sell intoxicating liquor, purchased from a class 1, manufacturer licensee, or a class 3, wholesale dealer’s licensee, to consumers for consumption on the licensee’s premises; provided that the premises is

owned and operated by the licensee. The categories of establishments shall be as follows:

- (A) A standard bar; or
- (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules;
- (5) May sell malt beverages manufactured on the licensee's premises to consumers in brewery-sealed kegs and growlers for off-premises consumption; provided that for purposes of this [{}paragraph,{}] "growler" means a glass container, not to exceed one half-gallon, that may be securely sealed;
- (6) May sell malt beverages manufactured on the licensee's premises to consumers, in glass recyclable containers that may be provided by the licensee or by the consumer, not to exceed one gallon per container, that are securely sealed on the licensee's premises, for off-premises consumption;
- (7) Shall comply with all regulations pertaining to class 4 retail licensees when engaging in the retail sale of malt beverages;
- (8) May sell malt beverages manufactured on the licensee's premises in brewery-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispensers' licensees, class 6 club licensees, class 7, 8, and 9 vessel licensees, transient vessel licensees, tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, and class 13 caterer licensees, pursuant to conditions imposed by county planning and public works departments and regulations governing class 3 wholesale dealers licensees; and
- (9) May conduct the activities described in paragraphs (1) through (8) at one location other than the licensee's premises; provided that the manufacturing takes place in Hawaii; and provided further the other location is properly licensed by the same ownership."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 22, 2005.)

**ACT 146**

S.B. NO. 1453

A Bill for an Act Relating to Public Service Company Tax.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act supersedes the tax appeal court's decision in *In the matter of the Tax Appeal of the Director of Taxation, State of Hawaii v. Laie Treatment Works, Inc.*, Tax Appeal Court, Case No. 02-0067. The legislature finds that a private sewer company or private sewer facility is a company or facility that should be deemed a public utility for purposes of the public service company tax.

The purpose of this Act is to levy and assess the public service company tax upon the gross income derived from the operation of a private sewer company or facility.

SECTION 2. Section 239-2, Hawaii Revised Statutes, is amended by amending the definition of “gross income” to read as follows:

““Gross income” means the gross income from public service company business as follows:

- (1) Gross income from the production, conveyance, transmission, delivery, or furnishing of light, power, heat, cold, water, gas, or oil;
- (2) Gross income from the transportation of passengers or freight, or the conveyance or transmission of telephone or telegraph messages other than mobile telecommunications services, or the furnishing of facilities for the transmission of intelligence by electricity, by land or water or air:
  - (A) Originating and terminating within this State;
  - (B) By means of vessels or aircraft having their home port in the State and operating between ports or airports in the State, with respect to the transportation so effected; or
  - (C) By means of plant or equipment located in the State, between points in the State; [ø]
- (3) Gross income from the transportation of freight by motor carriers (other than as stated in paragraph (2)), or the conveyance or transmission of messages or intelligence through wires or cables located or partly located in the State (other than as stated in paragraph (2) or [(4)]; ø] (5));
- (4) Gross income from the operation of a private sewer company or private sewer facility; or
- [(4)] (5) With respect to a home service provider of mobile telecommunications services, “gross income” includes charges billed for mobile telecommunications services provided by a home service provider to a customer with a place of primary use in this State when the mobile telecommunications services originate and terminate within the same state; provided that all such charges for mobile telecommunications services that are billed by or for the home service provider are deemed to be provided by the home service provider at the customer’s place of primary use, regardless of where the mobile telecommunications services originate, terminate, or pass through. [Gross income] “Gross income” shall not include:
  - (A) Any charges for or receipts from mobile telecommunications services provided to customers of the home service provider whose place of primary use is outside this State;
  - (B) Any receipts of a home service provider acting as a serving carrier providing mobile telecommunications services to another home service provider’s customer; and
  - (C) Any receipts specifically from interstate or foreign mobile telecommunications services taxable under section 237-13(6)(E), as determined by the home service provider’s books and records kept in the ordinary course of business.

For the purposes of this paragraph, “customer”, “home service provider”, “mobile telecommunications services”, “place of primary use”, and “serving carrier” have the same meaning as in section 239-22.

The words “gross income” and “gross income from public service company business” shall not be construed to include dividends (as defined by section 235-1) paid by one member of an affiliated public service company group to another member of the same group; or gross income from the sale or transfer of materials or supplies, interest on loans, or the provision of engineering, construction, maintenance, or managerial services by one member of an affiliated public service company group to another member of the same group. “Affiliated public service

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company group” means an affiliated group of domestic corporations within the meaning of chapter 235, all of the members of which are public service companies. “Member of an affiliated public service company group” means a corporation (including the parent corporation) ~~[which]~~ that is included within an affiliated public service company group.

Where the transportation of passengers or property is furnished through arrangements between motor carriers, and the gross income is divided between the motor carriers, any tax imposed by this chapter shall apply to each motor carrier with respect to each motor ~~[carriers’]~~ carrier’s respective portion of the proceeds.

Where tourism related services are furnished through arrangements made by a travel agency or tour packager and the gross income is divided between the provider of the services on the one hand and the travel agency or tour packager on the other hand, any tax imposed by this chapter shall apply to each person with respect to each person’s respective portion of the proceeds.

Accounts found to be worthless and actually charged off for income tax purposes, at corresponding periods, may be deducted from gross income as specified under this chapter so far as ~~[they]~~ the accounts reflect taxable sales, but shall be added to gross income when and if subsequently collected.

As used in this paragraph “tourism related services” means motor carriers of passengers regulated by the public utilities commission.”

SECTION 3. This Act shall apply to gross income derived from operation as a private sewer company or private sewer facility that accrued beginning July 1, 2005.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2005.

(Approved June 22, 2005.)

## ACT 147

H.B. NO. 1393

A Bill for an Act Relating to the Commission on the Status of Women.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 26-1, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) In addition to the functions and duties provided by law, the lieutenant governor shall assume administrative responsibility for ~~[the Hawaii state commission on the status of women and]~~ the office of information practices.”

SECTION 2. Section 26-14, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The housing and community development corporation of Hawaii [is] and the Hawaii state commission on the status of women are placed within the department of human services for administrative purposes only.”

SECTION 3. Section 367-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:



“(a) There is created a [temporary] state commission on the status of women for a special purpose within the [~~office of the lieutenant governor~~] department of human services for administrative purposes.”

SECTION 4. All rights, powers, functions, and duties of the Hawaii state commission on the status of women are transferred to the department of human services.

All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

No officer or employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act, and such officer or employee may be transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed; and provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

An officer or employee of the State who does not have tenure and who may be transferred or appointed to a civil service position as a consequence of this Act shall become a civil service employee without the loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges and without the necessity of examination; provided that such officer or employee possesses the minimum qualifications for the position to which transferred or appointed.

If an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department or the governor.

SECTION 5. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the office of the lieutenant governor relating to the functions transferred to the department of human services shall be transferred with the functions to which they relate.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 22, 2005.)

## ACT 148

S.B. NO. 1780

A Bill for an Act Relating to the Commission on Fatherhood.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 2 of Act 156, Session Laws of Hawaii 2003, is amended by amending section -2 to read as follows:

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“§ -2 **State commission on fatherhood.** There is established the state commission on fatherhood within the [~~office of the lieutenant governor~~] department of human services for administrative purposes.”

SECTION 2. Section 3 of Act 156, Session Laws of Hawaii 2003, is amended to read as follows:

“SECTION 3. This Act shall take effect on July 1, 2003, and be repealed on June 30, [~~2005.~~] 2007.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval; provided that section 2 shall take effect on June 29, 2005.

(Approved June 22, 2005.)

**ACT 149**

S.B. NO. 1699

A Bill for an Act Relating to Culture and the Arts.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii state foundation on culture and the arts biennium grants program is the largest source of public funding for arts programming in the state. As Hawaii’s state arts agency, the Hawaii state foundation on culture and the arts allocates general funds from the state legislature and federal funds from the National Endowment for the Arts and the state department of human services in support of cultural, artistic, historical, and humanitarian programs in the community. Funds are disbursed statewide.

Projects receiving state grants benefit our communities in the following ways:

- (1) They provide access to the arts for residents and visitors alike, with accessibility being especially vital to people on the neighbor islands;
- (2) Organizations are aided in their capacity to establish themselves and thrive in their communities;
- (3) The arts and cultures of Hawaii’s ethnic groups, in particular the arts and culture of native Hawaiians, are preserved and perpetuated for future generations;
- (4) The quality of arts programming, including for example concerts, performances, exhibitions, festivals, and readings, is higher when subsidies are obtained;
- (5) Government funds are important in leveraging private and corporate support for arts and cultural organizations;
- (6) Cultural tourism efforts are enhanced, promoted, and produced; and
- (7) The opportunity to host venues for artists of national and international stature is important to cultivate young audiences and to develop young talent.

In recent years, the Hawaii state foundation on culture and the arts biennium grants program has provided approximately \$1,200,000 to Hawaii’s culture and arts organizations, despite continuing restrictions to its general fund appropriation. However, research has shown that due to the cutbacks, the grants program is now

only able to award approximately one third of the funds necessary to fully support community efforts.

The purpose of this Act is to demonstrate strong legislative support for the importance of culture and the arts in Hawaii's communities and the enrichment of the quality of life of Hawaii's people by making an appropriation to the Hawaii state foundation on culture and the arts.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$175,000 or so much thereof as maybe necessary for the fiscal year 2005-2006 to support the Hawaii state foundation on culture and the arts biennium grants program to sustain and develop vital community programming in culture, the arts, history, and the humanities for the people of Hawaii.

The sums appropriated shall be expended by the department of accounting and general services for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2005.

(Approved June 22, 2005.)

## ACT 150

S.B. NO. 1018

A Bill for an Act Relating to Human Services.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. (a) There is established a temporary private preschool licensing and accreditation task force, under the department of human services for administrative purposes, to be convened jointly by the members of the task force.

The task force shall develop recommendations for licensing and accreditation standards, policies, and procedures for private elementary schools serving children under the age of five, with special focus on the policies and procedures of the Western Association of Schools and Colleges and the health and safety standards of the department of human services.

(b) The task force shall consist of five members as follows:

- (1) The director of human services or the director's designee;
- (2) The executive director of the Good Beginnings Alliance;
- (3) The executive director of the Hawaii Association of Independent Schools;
- (4) The superintendent of the Hawaii Catholic Schools; and
- (5) A representative from the Hawaii Business Roundtable.

(c) A majority of the members of the task force shall constitute a quorum of the task force. A quorum shall be required to approve standards, policies, and procedures developed by the task force pursuant to this section.

(d) Members of the temporary private preschool licensing and accreditation task force shall serve without compensation but shall be reimbursed by their respective agencies for expenses, including travel expenses, necessary for the performance of their duties.

(e) The task force shall submit a report of its findings and recommendations, including any recommended legislation, to the department of human services and to the legislature no later than twenty days prior to the convening of the regular session of 2006. The report shall serve as a basis for legislation or for administrative rule amendments by the department of human services.

(f) The task force shall cease to exist on June 30, 2006.

SECTION 2. This Act shall take effect on July 1, 2005.

(Approved June 23, 2005.)

**ACT 151**

H.B. NO. 1300

A Bill for an Act Relating to Early Childhood Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

**PART I  
PURPOSE**

SECTION 1. The legislature finds that the purpose and mission of education is to “advance the endowment of human nature itself, so that each succeeding generation finds itself further along the road towards peace, social justice, and environmental sustainability in a society guided by creativity, compassion, and curiosity” (Act 51, Session Laws of Hawaii 2004).

The legislature further finds that children are born ready to learn and that early childhood learning opportunities are essential and fundamental to developing self-esteem, personal values, social behaviors, attitudes that contribute to collaborative living, and skills that promote lifelong learning.

Nearly eighty-five per cent of brain development occurs in the first five years of life. Research has proven that a child’s early years are the most crucial in their cognitive, emotional, social, and physical development. Furthermore, it has been affirmed that early education measurably impacts kindergarten through grade 12 student achievement, as well as a child’s ability to integrate into society as a productive, contributing member.

The legislature further finds that every \$1 invested on quality early childhood education saves \$7 in welfare and penal system costs through improved student achievement, increased college attendance rates, and a corresponding reduction in crime and the need for welfare. Early education encourages and provides the support that child care centers, family child care services, and families and friends need to improve the quality of life of children by ensuring that children have enhanced access to a good beginning in life, laying the firm foundation that will enable youth to reach the potential with which they were born.

The legislature recognizes the importance of providing children with early learning opportunities of the highest quality, such as parenting programs, parent-child education programs, licensed and license-exempt child care, and center-based programs. Early childhood education programs, both public and private, should meet professionally-accepted standards and be staffed by well-trained, appropriately-compensated educators.

The purpose of this Act is to:

- (1) Improve early childhood education by establishing and appropriating funds for a temporary early childhood education task force to develop a framework to increase access to early childhood education, improve the quality of early childhood learning programs, support the professional development of early childhood educators and service providers, educate families about the value of early childhood education, and identify funding mechanisms to appropriately compensate early childhood educators; and
- (2) Increase the inventory of available facilities for early childhood education programs.

PART II  
EARLY CHILDHOOD EDUCATION TASK FORCE

SECTION 2. (a) There is established in the University of Hawaii a temporary early childhood education task force. The Hawaii Educational Policy Center shall be responsible for administering the work of the temporary task force, providing a facilitator, and submitting a report to the legislature. The goals of the temporary task force shall be to:

- (1) Propose an overall plan to increase access to early childhood education opportunities for families, which may include incentives, resource development, the need for and availability of infrastructure, and possible funding sources through:
    - (A) The identification of criteria, procedures, and methods for issuing subsidies to parents and legal guardians of children to facilitate their attendance at preschools and early learning programs; and
    - (B) The development of processes designed to:
      - (i) Promote public-private partnerships;
      - (ii) Create new and expand existing early childhood learning programs; and
      - (iii) Provide needs assessment and planning, including a coordinated data system;
  - (2) Develop plans and identify resources needed to improve the quality and services of early childhood learning programs by:
    - (A) Determining performance indicators of quality programs;
    - (B) Identifying and recommending quality assessment instruments and accreditation alternatives to facilitate planning for program improvement;
    - (C) Proposing incentives and rewards programs designed to increase overall school program quality;
    - (D) Using the Hawaii Preschool Content Standards as guidelines for program improvement; and
    - (E) Identifying and promoting multi-sector coordination;
  - (3) Design proposals to support the professional development of early childhood education staff, which may include:
    - (A) Identifying appropriate and desired education levels of staff;
    - (B) Recommending a compensation plan related to educational levels and experience that recognizes the value of early childhood education;
    - (C) Promoting mentor relationships in quality programs for educators and aspiring educators who seek to enter or improve the field as an early childhood education teacher;
    - (D) Identifying incentives and rewards to encourage ongoing professional development; and
    - (E) Expanding access to and the creation of innovative strategies for professional development opportunities;
  - (4) Create an implementation plan to motivate and promote the value of and participation in early childhood learning opportunities for parents and the general public, including the business community; and
  - (5) Recommend to the legislature a conceptual framework, along with proposals for policies and legislation necessary to facilitate and monitor the implementation of such a framework.
- (b) An element critical to the successful implementation of any plan proposed by the task force is the assessment and evaluation of the various program components. In the fulfillment of its objectives, the early childhood education task

force shall identify or develop appropriate assessment methods and mechanisms and performance indicators that will allow monitoring and improvement of the initiative.

(c) The task force shall establish a timeline by which these goals and tasks shall be accomplished.

(d) The members of the early childhood education task force shall consist of twenty members as follows:

- (1) The speaker of the house of representatives or the speaker's designee;
- (2) The president of the senate or the president's designee;
- (3) The superintendent of education or the superintendent's designee;
- (4) The director of human services or the director's designee;
- (5) The director of health or the director's designee;
- (6) The executive director of the good beginnings alliance or the executive director's designee;
- (7) The dean of the college of education at the University of Hawaii or the dean's designee;
- (8) A representative from each of the early childhood education communities in the counties of Kauai, Maui, and Hawaii, to be appointed by the respective mayors;
- (9) The chief executive officer of Kamehameha Schools or the chief executive officer's designee;
- (10) The president of the Hawaii Head Start Association or the president's designee;
- (11) The executive director of the Hawaii Association for the Education of Young Children or the executive director's designee;
- (12) The executive director of the Hawaii Association of Independent Schools or the executive director's designee;
- (13) One member from the resource and referral community to be selected by People Attentive To Children;
- (14) One member to be selected by the Hawaii Business Roundtable;
- (15) The liaison of the Childcare Business Coalition or the liaison's designee;
- (16) The president of Chaminade University or the president's designee;
- (17) The coordinator of early childhood programs of the University of Hawaii community colleges or the coordinator's designee; and
- (18) A communications professional as recommended by a majority vote of the temporary task force.

(e) The early childhood education task force may form workgroups and subcommittees to:

- (1) Obtain input from stakeholders, early education professionals, and any other individuals as may be determined necessary by the task force; and
- (2) Perform any other functions as may be deemed necessary by the task force for the fulfillment of their functions.

(f) Members of the early childhood education task force shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(g) The early childhood education task force shall be exempt from chapter 92, Hawaii Revised Statutes; provided that the task force shall make a good faith effort to make its proceedings and work products accessible and available to the general public in a manner consistent with the intent of chapter 92, Hawaii Revised Statutes.

(h) The early childhood education task force shall be exempt from the requirements of chapter 103D.

(i) The early childhood education task force shall submit a report of its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2006.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2005-2006 to support the operations of the early childhood education task force.

The sum appropriated shall be expended by the University of Hawaii for the purposes of this part and not be subject to chapter 103D.

PART III  
EARLY CHILDHOOD EDUCATIONAL FACILITIES

SECTION 4. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§302A- Early childhood education facilities; identifying sites.** (a) The department of education shall identify unused public school facilities for use by early childhood education programs. Suitable empty classrooms, as determined by the department, shall be inventoried for potential use in early childhood education programs. Priority shall be given to facilities on sites with sufficient space for three or more classrooms to be renovated or constructed.

(b) The department shall assist in the identification of possible construction sites for private providers to build early childhood education facilities.”

SECTION 5. The department of education shall transmit to the legislature, department of human services, and the early childhood education task force, no later than October 1, 2005, the inventory of suitable empty classrooms for potential use in early childhood education programs.

PART IV  
MISCELLANEOUS

SECTION 6. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect upon its approval; provided that section 2 shall be repealed on June 30, 2006; provided further that section 3 shall take effect on July 1, 2005.

(Approved June 23, 2005.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 152**

H.B. NO. 477

A Bill for an Act Relating to Exempting Roth Individual Retirement Accounts from Attachment or Seizure.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the Roth individual retirement account is a sound financial tool for retirement planning. Many people currently in the workforce will use the Roth individual retirement account as a part of their financial planning as opposed to or in conjunction with a regular individual retirement account. Both types of retirement accounts use compound interest to grow contributions over time, providing a nest egg for the owner of either account.

The legislature also finds that a regular individual retirement account is protected from the claims of creditors under section 651-124, Hawaii Revised

Statutes, but the same is not true for a Roth individual retirement account. Legal arguments abound whether a reference in the Hawaii statute to section 408 of the Internal Revenue Code that relates to pensions exempted from creditor claims, encompasses Roth individual retirement accounts, which are discussed within section 408A of the Internal Revenue Code.

It is the intent of the legislature to remove any ambiguity from the State's pension money exemption statute in favor of protecting Roth individual retirement accounts from the claims of creditors in the same manner as regular individual retirement accounts.

SECTION 2. Section 651-124, Hawaii Revised Statutes, is amended to read as follows:

**“§651-124 Pension money exempt.** The right of a debtor to a pension, annuity, retirement or disability allowance, death benefit, any optional benefit, or any other right accrued or accruing under any retirement plan or arrangement described in section 401(a), 401(k), 403(a), 403(b), 408, 408A, 409 (as in effect prior to January 1, 1984), 414(d), or 414(e) of the Internal Revenue Code of [~~1954,~~] 1986, as amended, or any fund created by the plan or arrangement, shall be exempt from attachment, execution, seizure, the operation of bankruptcy or insolvency laws under 11 United States Code section 522(b), or under any legal process whatever. However, this section shall not apply to:

- (1) A “qualified domestic relations order” as defined in section 206(d) of the Employee Retirement Security Act of 1974, as amended, or in section 414(p) of the Internal Revenue Code of [~~1954,~~] 1986, as amended; and
- (2) Contributions made to a plan or arrangement within the three years before the date a debtor files for bankruptcy, whether voluntary or involuntary, or within three years before the date a civil action is initiated against the debtor, except for contributions to a retirement plan established by state statute if the effect would be to eliminate a state employee's retirement service credit.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 23, 2005.)

## ACT 153

S.B. NO. 1285

A Bill for an Act Relating to Traditional Hawaiian Healing Practices.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 453-2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Nothing [~~herein~~] in this chapter shall prohibit [~~traditional Hawaiian~~] healing practices by traditional [~~native~~] Hawaiian healers[;] engaged in traditional Native Hawaiian healing practices, both as recognized and certified as such by [~~a panel~~] any kupuna council convened by Papa Ola Lokahi. No person or organization



involved with the selection of ~~[panel members]~~ kupuna council members, the convening of a kupuna council, or the ~~[denial of]~~ certification process of healers under this subsection shall be sued or held liable for any cause of action that may arise out of their participation in the selection, convening, or certification process. Nothing in this chapter shall limit, alter, or otherwise adversely affect any rights of practice of traditional Native Hawaiian healing pursuant to the Constitution of the State of Hawaii."

SECTION 2. Act 162, Session Laws of Hawaii 1998, section 2 is amended to read as follows:

"For the purposes of this Act:

~~[(1) The term]~~ "Papa Ola Lokahi" shall refer to the same organization that is described and defined in Public Law No. 102-396, the Native Hawaiian Health Care Improvement Act of 1992~~];~~

~~[(2) The term "traditional native Hawaiian healer" shall have the same meaning as provided under Public Law No. 102-396, the Native Hawaiian Health Care Improvement Act of 1992; and]~~

~~[(3) The term "traditional]~~ "Traditional Hawaiian healing practices" shall refer to la'au lapa'au, la'au kahea, lomi lomi, ho'oponopono, and similar practices ~~[commonly]~~ historically performed by traditional native Hawaiian healers."

SECTION 3. Act 162, Session Laws of Hawaii 1998, section 4(a), as amended by Act 304, Session Laws of Hawaii 2001, section 2, is amended to read as follows:

"(a) Papa Ola Lokahi shall convene at least one ~~[panel of traditional native Hawaiian healers]~~ kupuna council to address issues ~~[and recommend legislation]~~ relating to the ~~[permanent]~~ implementation of the purposes of this Act. ~~[A panel]~~ Each kupuna council shall consist of any number of members deemed necessary by Papa Ola Lokahi; provided that at least three ~~[native]~~ Hawaiian persons who are deemed by the Papa Ola Lokahi or a kupuna council to be proficient in the practice of traditional ~~[native]~~ Native Hawaiian healing methods shall be members of any such ~~[panel;]~~ kupuna council. Once ~~[a panel]~~ any kupuna council is established, subsequent members shall be chosen by a majority of the existing ~~[panel]~~ council members sitting on that ~~[panel;]~~ council; provided that if a prospective member claims to be proficient in the practice of traditional ~~[native]~~ Native Hawaiian healing methods, then the approval of a majority of the ~~[native]~~ traditional Hawaiian healers on the ~~[panel]~~ kupuna council shall be required.

Each kupuna council shall:

- (1) Be independent;
- (2) Not be a component of any state branch;
- (3) Not be subject to chapters 91 and 92, Hawaii Revised Statutes; and
- (4) Develop its own policies, procedures, and rules necessary or appropriate to certify traditional Hawaiian healers."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 23, 2005.)

#### Note

1. Prior to amendment "SECTION 2." appeared here.

A Bill for an Act Relating to Reports to the Legislature.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 37-52.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§37-52.5]]~~ **Criteria for the establishment and continuance of administratively established accounts and funds.** ~~[Any]~~ (a) Except for the judiciary, any department or agency that administratively establishes any new account or fund ~~[shall]~~, within thirty working days of its establishment, shall transmit a report to the legislature. The report to the legislature shall include:

- (1) The justification for the establishment of the account or fund; and
- (2) The sources of revenue for the fund.

~~[Each]~~ (b) Except for the judiciary, each department or agency ~~[shall]~~, at least twenty days prior to the convening of each regular session, shall submit a report to the legislature. The report shall include:

- (1) A list of all administratively established accounts or funds; and
- (2) All revenues, expenditures, encumbrances, and ending balances of each account or fund.”

SECTION 2. Section 40-82, Hawaii Revised Statutes, is amended to read as follows:

“**§40-82 Uncollectible accounts.** (a) The directors, boards, or executive heads of executive departments ~~[may]~~, from time to time, may prepare and submit for the review of the attorney general a list of all uncollectible accounts in their departments. Such accounts as the attorney general finds to be uncollectible shall be entered in a special record and be deleted from the accounts receivable records of the departments, which shall thereupon be relieved from any further accountability for their collection; provided that no account shall be so deleted until it shall have been delinquent for at least two consecutive years. Any account entered in the special record shall be transferred back to the current accounts receivable if the attorney general finds that the facts as alleged and presented to the attorney general were not true, or that the account has become collectible.

As used in this section, “uncollectible account” means an account with regard to which:

- (1) The debtor or party causing damage to property belonging to the State is no longer within the jurisdiction of the State;
- (2) The debtor or party causing damage to property belonging to the State cannot be located;
- (3) The party causing damage to property belonging to the State is unknown or cannot be identified;
- (4) The debtor has filed for bankruptcy and has listed the State as a creditor; or
- (5) Any other account as may be deemed by the attorney general to be uneconomical or impractical to collect.

(b) The judiciary ~~[may]~~, from time to time, may prepare lists of all delinquent fines and restitution, which in its judgment are uncollectible. The fines or restitution that the judiciary finds to be uncollectible shall be entered in a special record and be deleted from the other books kept by the judiciary, and the judiciary shall thereupon be released from any further accountability for their collection; provided that no

~~[account]~~ fine or restitution shall be so deleted until it shall have been delinquent for at least two years. Any ~~[fines]~~ fine or restitution so written off may be transferred back to the judiciary's accounts receivable if the judiciary finds that the ~~[alleged]~~ facts as alleged and previously presented to it were not true, or that the fines or restitution are in fact collectible, or that the fines or restitution have become collectible. Nothing in this ~~[section]~~ subsection shall preclude a person to whom restitution is owed from pursuing collection of the debt.

~~[(e) The judiciary shall submit an annual report to the legislature, no later than twenty days prior to the convening of each regular session, which shall summarize the types and amounts of uncollectible delinquent fines and restitution that either were:~~

- ~~(1) Entered in a special record and deleted from the judiciary's other books; or~~
- ~~(2) Transferred back to the judiciary's accounts receivable.~~

~~(d)~~ (c) The University of Hawaii ~~[may]~~, from time to time, may prepare for the review of the university general counsel a list of all uncollectible accounts. Such accounts as the university general counsel finds to be uncollectible shall be entered into a special record and be deleted from the accounts receivable records of the university, which shall thereupon be relieved from any further accountability for their collection; provided that no account shall be so deleted until it shall have been delinquent for at least two consecutive years. Any account entered in the special record shall be transferred back to the current accounts receivable if the university general counsel finds that the account has become collectible.

~~[(e)]~~ (d) The university shall submit an annual report to the legislature, no later than twenty days prior to the convening of each regular session, ~~[which]~~ that shall summarize the types and amounts of uncollectible delinquent ~~[fines and restitution]~~ accounts that either were:

- ~~(1) Entered in a special record and deleted from the university's other books; or~~
- ~~(2) Transferred back to the university's accounts receivable."~~

SECTION 3. Section 353B-4, Hawaii Revised Statutes, is amended to read as follows:

~~"[§353B-4] Expenditures[; reports]. Expenditures by the council, including the amounts fixed annually as the equal contribution of each member to the compact, shall be made upon warrants issued by the state comptroller based upon vouchers approved by any one of the commissioners. [A report of the activities and expenses of the commissioners and a proposed program for the State's continuing participation in the activities of the interstate commission for adult supervision, including a budget request, shall be submitted by the commissioners to each regular session of the legislature.]"~~

SECTION 4. Act 100, Session Laws of Hawaii 1999, is amended by amending sections 6 and 7 to read as follows:

"SECTION 6. The legislature finds that our state departments and agencies should constantly be working towards improving the effectiveness and efficiency of our government. Improving government operations through strategic planning can result in increased and more effective government programs and improved coordination among different agencies and levels of government, and optimal use of state funds and personnel.

The legislature believes that the development of goals and objectives is essential for state departments and agencies to determine priorities, guide their

decisions, and measure the effectiveness of their programs and services. Moreover, goals and objectives would assist the legislature in evaluating the budgetary needs of departments and agencies.

The legislature further finds that many of our State's departments and agencies have not formally established goals and objectives. Accordingly, the purpose of this Act is to require all departments and agencies, except for the judiciary, to identify their goals, objectives, and policies, to provide a basis for determining priorities and allocating limited public funds and human resources.

SECTION 7. ~~Every~~ Except for the judiciary, every department and agency of the State shall develop and submit to the legislature no later than twenty days prior to the start of the regular session of 2000 and each regular session thereafter, an annual report addressing the following:

- (1) A statement of goals, including what the department or agency hopes to accomplish over both the short and long term;
- (2) Objectives and policies, specifically setting forth how each goal can and will be accomplished;
- (3) An action plan with a timetable indicating how the established objectives and policies will be implemented in one, two, and five years; and
- (4) The process that the department or agency will use to measure the performance of its programs and services in meeting the stated goals, objectives, and policies."

SECTION 5. Act 90, Session Laws of Hawaii 2001, section 2, is amended by amending section -3 to read as follows:

**"§ -3 Annual reports.** ~~Each~~ Except for the judiciary, each state and county department and agency that uses the contracting process set out in this chapter, shall submit a report to the legislature no later than twenty days prior to the convening of the regular session of each year beginning with 2002. The report shall include:

- (1) An itemization of all services that were outsourced or subjected to the processes set out in this chapter;
- (2) The agency's or department's justification that standards for determination were met;
- (3) The cost of services obtained through the process set out in this chapter;
- (4) A copy of all contracts entered into under this chapter; and
- (5) An accounting of civil service employees displaced as a consequence of this chapter."

SECTION 6. Act 203, Session Laws of Hawaii 1996, is amended by repealing section 6.

~~["SECTION 6. The judiciary and the department of commerce and consumer affairs shall submit a joint report to the legislature on an annual basis regarding the status and results of the program. The legislature may require such further reports as it deems necessary."]~~

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2005.

(Approved June 23, 2005.)

## ACT 155

S.B. NO. 1798

A Bill for an Act Relating to Nonprofit Corporations.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 514A-82, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In addition to the requirements of subsection (a), the bylaws shall be consistent with the following provisions:

- (1) At any regular or special meeting of the apartment owners, any one or more members of the board of directors may be removed by the apartment owners and successors shall then and there be elected for the remainder of the term to fill the vacancies thus created. The removal and replacement shall be by a vote of a majority of the apartment owners and, otherwise, in accordance with all applicable requirements and procedures in the bylaws for the removal and replacement of directors~~[-, including any provision relating to cumulative voting]~~. If removal and replacement is to occur at a special association meeting, the call for the meeting shall be by the president or by a petition to the secretary or managing agent signed by not less than twenty-five per cent of the apartment owners as shown in the association’s record of ownership; provided that if the secretary or managing agent shall fail to send out the notices for the special meeting within fourteen days of receipt of the petition, then the petitioners shall have the authority to set the time, date, and place for the special meeting and to send out the notices for the special meeting in accordance with the requirements of the bylaws. Except as otherwise provided in this section, the meeting for the removal and replacement from office of directors shall be scheduled, noticed, and conducted in accordance with the bylaws of the association[-];
- (2) The bylaws may be amended at any time by the vote or written consent of sixty-five per cent of all apartment owners; provided that:
  - (A) Each one of the particulars set forth in this subsection shall be embodied in the bylaws always; and
  - (B) Any proposed bylaws with the rationale for the proposal may be submitted by the board of directors or by a volunteer apartment owners’ committee. If submitted by that committee, the proposal shall be accompanied by a petition signed by not less than twenty-five per cent of the apartment owners as shown in the association’s record of ownership. The proposed bylaws, rationale, and ballots for voting on any proposed bylaw shall be mailed by the board of directors to the owners at the expense of the association for vote or written consent without change within thirty days of the receipt of the petition by the board of directors. The vote or written consent required to adopt the proposed bylaw shall not be less than sixty-five per cent of all apartment owners; provided that the vote or written consent must be obtained within three hundred sixty-five days after mailing for a proposed bylaw submitted by either the board of directors or a volunteer apartment owners’ committee. If the bylaw is duly adopted, then the board shall cause the bylaw amendment to be recorded in the bureau of conveyances or filed in the land court, as the case may

be. The volunteer apartment owners' committee shall be precluded from submitting a petition for a proposed bylaw that is substantially similar to that which has been previously mailed to the owners within one year after the original petition was submitted to the board.

This [subsection] paragraph shall not preclude any apartment owner or voluntary apartment owners' committee from proposing any bylaw amendment at any annual association meeting[-];

- (3) Notices of association meetings, whether annual or special, shall be sent to each member of the association of apartment owners at least fourteen days prior to the meeting and shall contain at least: the date, time, and place of the meeting, the items on the agenda for the meeting, and a standard proxy form authorized by the association, if any[-];
- (4) No resident manager or managing agent shall solicit, for use by the manager or managing agent, any proxies from any apartment owner of the association of owners that employs the resident manager or managing agent, nor shall the resident manager or managing agent cast any proxy vote at any association meeting except for the purpose of establishing a quorum. Any board of directors that intends to use association funds to distribute proxies, including the standard proxy form referred to in paragraph (3), shall first post notice of its intent to distribute proxies in prominent locations within the project at least thirty days prior to its distribution of proxies; provided that if the board receives within seven days of the posted notice a request by any owner for use of association funds to solicit proxies accompanied by a statement, the board shall mail to all owners either:
  - (A) A proxy form containing the names of all owners who have requested the use of association funds for soliciting proxies accompanied by their statements; or
  - (B) A proxy form containing no names, but accompanied by a list of names of all owners who have requested the use of association funds for soliciting proxies and their statements.

The statement shall not exceed one hundred words, indicating the owner's qualifications to serve on the board and reasons for wanting to receive proxies[-];

- (5) A director who has a conflict of interest on any issue before the board shall disclose the nature of the conflict of interest prior to a vote on that issue at the board meeting, and the minutes of the meeting shall record the fact that a disclosure was made[-];
- (6) The apartment owners shall have the irrevocable right, to be exercised by the board of directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the operation of the property or for making emergency repairs therein necessary to prevent damage to the common elements or to another apartment or apartments[-];
- (7) An owner shall not act as an officer of an association and an employee of the managing agent employed by the association[-];
- (8) An association's employees shall not engage in selling or renting apartments in the condominium in which they are employed except association-owned units, unless such activity is approved by an affirmative vote of sixty-five per cent of the membership[-];
- (9) The board of directors shall meet at least once a year. Whenever practicable, notice of all board meetings shall be posted by the resident manager or a member of the board in prominent locations within the

- project seventy-two hours prior to the meeting or simultaneously with notice to the board of directors[.];
- (10) Directors shall not expend association funds for their travel, directors' fees, and per diem, unless owners are informed and a majority approve of these expenses[.];
  - (11) Associations at their own expense shall provide all board members with a current copy of the association's declaration, bylaws, house rules, and, annually, a copy of this chapter with amendments[.];
  - (12) The directors may expend association funds, which shall not be deemed to be compensation to the directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget shall include these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the State, all other travel expenses incurred under this subsection shall be subject to the requirements of paragraph (10)[.];
  - (13) A lien created pursuant to section 514A-90 may be enforced by the association in any manner permitted by law, including nonjudicial or power of sale foreclosure procedures authorized by chapter 667[.]; and
  - (14) If the bylaws provide for cumulative voting by the owners, the owners may so vote if an owner gives notice of the owner's intent to cumulatively vote before voting commences.

The provisions of this subsection shall be deemed incorporated into the bylaws of all condominium projects existing as of January 1, 1988, and all condominium projects created after that date."

SECTION 2. Section 2 of Act 164, Session Laws of Hawaii 2004, is amended by amending subsection (a) of section -104, Hawaii Revised Statutes, to read as follows:

"(a) Except as provided in section -105, and subject to the provisions of the declaration and bylaws, the association, even if unincorporated, may:

- (1) Adopt and amend the declaration, bylaws, and rules and regulations;
- (2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners, subject to section -148;
- (3) Hire and discharge managing agents and other independent contractors, agents, and employees;
- (4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium. For the purposes of actions under chapter 480, associations shall be deemed to be "consumers";
- (5) Make contracts and incur liabilities;
- (6) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (7) Cause additional improvements to be made as a part of the common elements;
- (8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property; provided that designation of additional areas to be common elements or subject to common expenses after the initial filing of the declaration or bylaws shall require the approval of at least sixty-seven per cent of the unit owners; provided further that if the developer discloses to the initial buyer in

writing that additional areas will be designated as common elements whether pursuant to an incremental or phased project or otherwise, this requirement shall not apply as to those additional areas; and provided further that this paragraph shall not apply to the purchase of a unit for a resident manager;

- (9) Subject to section -38, grant easements, leases, licenses, and concessions through or over the common elements and permit encroachments on the common elements;
- (10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in section -35(2) and (4), and for services provided to unit owners;
- (11) Impose charges and penalties, including late fees and interest, for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, rules, and regulations of the association, either in accordance with the bylaws or, for condominiums created after May 17, 1983, if the bylaws are silent, pursuant to a resolution adopted by the board and approved by sixty-seven per cent of all unit owners at an annual meeting of the association or by the written consent of sixty-seven per cent of all unit owners;
- (12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, documents requested for resale of units, or statements of unpaid assessments;
- (13) Provide for cumulative voting[;] through a provision in the bylaws; provided that an owner shall provide notice of the owner's intent to cumulatively vote before voting commences;
- (14) Provide for the indemnification of its officers, board, committee members, and agents, and maintain directors' and officers' liability insurance;
- (15) Assign its right to future income, including the right to receive common expense assessments, but only to the extent section -105(e) expressly so provides;
- (16) Exercise any other powers conferred by the declaration or bylaws;
- (17) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association, except to the extent inconsistent with this chapter;
- (18) Exercise any other powers necessary and proper for the governance and operation of the association; and
- (19) By regulation, subject to sections -146, -161, and -162, require that disputes between the board and unit owners or between two or more unit owners regarding the condominium be submitted to nonbinding alternative dispute resolution in the manner described in the regulation as a prerequisite to commencement of a judicial proceeding."

SECTION 3. Section 2 of Act 164, Session Laws of Hawaii 2004, is amended by amending subsection (f) of section -106, Hawaii Revised Statutes, to read as follows:

"(f) At any regular or special meeting of the association, any member of the board may be removed and successors shall be elected for the remainder of the term to fill the vacancies thus created. The removal and replacement shall be by a vote of a majority of the unit owners and, otherwise, in accordance with all applicable



requirements and procedures in the bylaws for the removal and replacement of directors[~~, including any provision relating to cumulative voting,~~] and, if removal and replacement is to occur at a special meeting, section -121(b).”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval; provided that sections 2 and 3 of this Act shall take effect when section 2 of Act 164, Session Laws of Hawaii 2004, takes effect.

(Approved June 23, 2005.)

## ACT 156

H.B. NO. 1308

A Bill for an Act Relating to Land Conservation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature recognizes the value of Hawaii’s natural resources to its economy, culture, and quality of life, but an alarmingly small amount of money is invested each year to protect our natural capital base. The legislature further finds that the preservation, protection, and enhancement of the State’s land, coastal areas, and natural resources are of central importance for current and future residents and for the state economy. Article XI, section 1, of the Constitution of the State of Hawaii sets forth the State’s duty to conserve and protect Hawaii’s natural beauty. Further, adequate funding to conserve land for watershed protection, coastal preservation, flood prevention, parks, habitat protection, cultural preservation, agricultural production, and open space and scenic resources is necessary to ensure protection of these lands and resources for future generations.

The legislature has already determined that the conveyance tax is an appropriate means to fund the conservation of natural resources by dedicating a portion of the current assessment to the natural area partnership program and forest stewardship program that assist private landowners in managing important natural resources.

The legislature has also determined that there is a clear nexus between the source of the conveyance tax and providing funding for watershed protection and other natural resource preservation programs. The development, sale, and improvement of real estate in Hawaii adds additional pressure on natural areas, coastal access, agricultural production, and Hawaii’s water resources and watershed recharge areas.

The purpose of this Act is to establish permanent adequate funding for land conservation by increasing the conveyance tax on a sliding scale and dedicating ten per cent of the annual proceeds from the conveyance tax to the existing land acquisition fund established by Act 77, Session Laws of Hawaii 1973, codified as the land conservation fund in section 173A-5, Hawaii Revised Statutes.

SECTION 2. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

**“§36-27 Transfers from special funds for central service expenses.** Except as provided in this section, and notwithstanding any other law to the contrary, from time to time, the director of finance, for the purpose of defraying the

prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special out-of-school time instructional program fund under section 302A-1310;
  - (2) School cafeteria special funds of the department of education;
  - (3) Special funds of the University of Hawaii;
  - (4) State educational facilities improvement special fund;
  - (5) Convention center enterprise special fund under section 201B-8;
  - (6) Special funds established by section 206E-6;
  - (7) Housing loan program revenue bond special fund;
  - (8) Housing project bond special fund;
  - (9) Aloha Tower fund created by section 206J-17;
  - (10) Funds of the employees' retirement system created by section 88-109;
  - (11) Unemployment compensation fund established under section 383-121;
  - (12) Hawaii hurricane relief fund established under chapter 431P;
  - (13) Hawaii health systems corporation special funds;
  - (14) Tourism special fund established under section 201B-11;
  - (15) Universal service fund established under chapter 269;
  - (16) Integrated tax information management systems special fund under section 231-3.2;
  - (17) Emergency and budget reserve fund under section 328L-3;
  - (18) Public schools special fees and charges fund under section 302A-1130(f);
  - (19) Sport fish special fund under section 187A-9.5;
  - (20) Neurotrauma special fund under section 321H-4;
  - (21) Deposit beverage container deposit special fund under section 342G-104;
  - (22) Glass advance disposal fee special fund established by section 342G-82;
  - (23) Center for nursing special fund under section 304D-5;
  - (24) Passenger facility charge special fund established by section 261-5.5;
- [and
- [](25)[)] Solicitation of funds for charitable purposes special fund established by section 467B-15[;]; and
- (26) Land conservation fund established by section 173A-5,

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year.”

SECTION 3. Section 173A-2, Hawaii Revised Statutes, is amended by amending the definition of “land having value as a resource to the State” to read as follows:

““Land having value as a resource to the State” includes land having natural, environmental, recreational, scenic, cultural, agricultural production, or historic value, and may also include park and trail systems [~~which~~] that provide access to any such land.”

SECTION 4. Section 173A-5, Hawaii Revised Statutes, is amended to read as follows:

~~“[§173A-5] Fund for the environment.] Land conservation fund.~~ (a) ~~[A fund for the environment;] A land conservation fund, hereinafter called “fund,”~~ is hereby established.

(b) The proceeds from the sale of any general obligation bonds, authorized and issued for purposes of this chapter, shall be deposited in or credited to the fund.

(c) Any net proceeds or revenue from the operation, management, sale, lease, or other disposition of land or the improvements on such land, acquired or constructed by the board under the provisions of this chapter, shall also be deposited in or credited to the fund.

(d) Ten per cent of all taxes imposed and collected by section 247-1 shall be deposited in or credited to the fund every year.

(e) The fund shall be administered and managed by the department.

(f) The acquisition of interests or rights in land having value as a resource to the State for the preservation of:

- (1) Watershed protection;
- (2) Coastal areas, beaches, and ocean access;
- (3) Habitat protection;
- (4) Cultural and historical sites;
- (5) Recreational and public hunting areas;
- (6) Parks;
- (7) Natural areas;
- (8) Agricultural production; or
- (9) Open spaces and scenic resources,

constitutes a public purpose for which public funds may be expended or advanced.

(g) The fund shall be used for:

- (1) The acquisition of interests or rights in land having value as a resource to the State, whether in fee title or through the establishment of permanent conservation easements under chapter 198; and
- (2) Annual administration costs for the fund, not to exceed five per cent of annual fund revenues of the previous year.

(h) Based on applications from state agencies, counties, and nonprofit land conservation organizations, the department shall recommend to the board specific parcels of land to be acquired, restricted with conservation easements, or preserved in similar fashion. The board shall review the selections and approve or reject the selections according to the availability of moneys in the fund. To be eligible for grants from the fund, state and county agencies and nonprofit land conservation organizations shall submit applications to the department that contain:

- (1) Contact information for the project;
- (2) A description of the project;
- (3) The request for funding;
- (4) Cost estimates for acquisition of the interest in the land;
- (5) Location and characteristics of the land; and
- (6) Other similar, related, or relevant information as may be determined by the department.

(i) For applications approved by the board, the board may acquire land having value as a resource to the State, pursuant to section 173A-4, or the board may award grants from the fund to the qualifying state or county agencies or nonprofit land conservation organizations for the preservation of the real property. Where the recipient of a grant is a county agency or nonprofit land conservation organization, the board shall require additional matching funds of at least twenty-five per cent of the total project costs. Matching funds may be in the form of:

- (1) Direct moneys;
- (2) A combination of public and private funds;
- (3) Land value donation;
- (4) In-kind contributions; or
- (5) Any combination of the above,

and evidence of these matching funds shall be made available from the qualifying entities prior to distribution of the fund grant.

(j) The board shall:

- (1) Track amounts disbursed from the fund;
- (2) Prepare an annual report to be transmitted to the governor and the legislature at least twenty days prior to the convening of each regular session of the legislature. The annual report shall include:
  - (A) A summary of all interests or rights in land acquired during the preceding fiscal year;
  - (B) A summary of what value each newly acquired land has as a resource to the State;
  - (C) Proposals for future land acquisitions, including a summary of the resource value that the land may possess;
  - (D) A financial report for the preceding fiscal year; and
  - (E) Objectives and budget projections for the following fiscal year; and
- (3) Make copies of the annual report available to the public.”

SECTION 5. Section 173A-9, Hawaii Revised Statutes, is amended to read as follows:

“[[§173A-9[]] Grants to state agencies, counties[,], and nonprofit land conservation organizations. Subject to the approval of the governor, the board may make grants to state agencies, counties, and nonprofit land conservation organizations from available funds for the purchase or acquisition [by eminent domain] of interests or rights in land having value as a resource to the State, whether in fee title or through the purchase of permanent conservation easements under chapter 198, and approved for purchase or acquisition by the board. Any land so acquired by any state agency or county may[, subject to chapter 171,] be sold, leased, or otherwise disposed of, subject to chapter 171, with the prior written approval of the board. Any land acquired by any nonprofit land conservation organization under this chapter may be sold, leased, or otherwise disposed of with the prior written approval of the board. Any permanent conservation easement established under this section that includes partnership with a federal land conservation program may be transferred only as provided by rules of the federal program.”

SECTION 6. Section 173A-10, Hawaii Revised Statutes, is amended to read as follows:

“[[§173A-10[]] Proceeds of sale, lease, or other disposition. Whenever any such land is sold by any state agency, county, or nonprofit land conservation organization, that portion of the net proceeds (sale price less actual expenses of sale) of such sale equal to the proportion [which] that the grant by the State bears to the original cost of the land or other property shall be paid to the State. In the event any such land or other property is leased, rented, or otherwise disposed of, that portion of the rental or proceeds equal to the proportion that the grant by the State bears to the original cost of the land or other property shall be paid to the State. Any proceeds received by the State pursuant to this section that were originally paid out of the fund pursuant to section 173A-9 shall be redeposited in or credited to the fund. This

section shall not apply to rents of property protected by permanent conservation easements established by grants from the fund.”

SECTION 7. Section 247-2, Hawaii Revised Statutes, is amended to read as follows:

**“§247-2 Basis and rate of tax.** The tax imposed by section 247-1 shall be based on the actual and full consideration (whether cash or otherwise, including any promise, act, forbearance, property interest, value, gain, advantage, benefit, or profit), paid or to be paid~~[-, which]~~ for all transfers or conveyance of realty or any interest therein, that shall include any liens or encumbrances thereon at the time of sale, lease, sublease, assignment, transfer, or conveyance, and shall be at the [rate of 10 cents per \$100] following rates:

- (1) Except as provided in paragraph (2):
  - (A) Ten cents per \$100 for properties with a value of less than \$600,000;
  - (B) Twenty cents per \$100 for properties with a value of at least \$600,000, but less than \$1,000,000; and
  - (C) Thirty cents per \$100 for properties with a value of \$1,000,000 or greater; and
- (2) For the sale of a condominium or single family residence for which the purchaser is ineligible for a county homeowner’s exemption on property tax:
  - (A) Fifteen cents per \$100 for properties with a value of less than \$600,000;
  - (B) Twenty-five cents per \$100 for properties with a value of at least \$600,000, but less than \$1,000,000; and
  - (C) Thirty-five cents per \$100 for properties with a value of \$1,000,000 or greater,

of such actual and full consideration; provided that in the case of a lease or sublease, this chapter shall apply only to a lease or sublease whose full unexpired term is for a period of five years or more, and in those cases, including (where appropriate) those cases where the lease has been extended or amended, the tax in this chapter shall be based on the cash value of the lease rentals discounted to present day value and capitalized at the rate of six per cent, plus the actual and full consideration paid or to be paid for any and all improvements, if any, ~~which~~ that shall include on-site as well as [effsite] off-site improvements, applicable to the leased premises; and provided further that the tax imposed for each transaction shall be not less than \$1.”

SECTION 8. Section 247-7, Hawaii Revised Statutes, is amended to read as follows:

**“§247-7 Disposition of taxes.** All taxes collected under this chapter shall be paid into the state treasury to the credit of the general fund of the State, to be used and expended for the purposes for which the general fund was created and exists by law; provided that of the taxes collected each fiscal year~~[-, twenty-five]:~~

- (1) Ten per cent shall be paid into the land conservation fund established pursuant to section 173A-5;
- (2) Thirty per cent shall be paid into the rental housing trust fund established by section 201G-432; and [twenty-five]
- (3) Twenty-five per cent shall be paid into the natural area reserve fund established by section 195-9; provided that the funds paid into the natural area reserve fund shall be annually disbursed by the department of land and natural resources [after joint consultation with the forest

~~stewardship committee and the natural area reserves system commission]~~ in the following priority:

- {1} (A) To natural area partnership and forest stewardship programs[;] after joint consultation with the forest stewardship committee and the natural area reserves system commission;
- {2} (B) Projects undertaken in accordance with watershed management plans pursuant to section 171-58 or watershed management plans negotiated with private landowners[;], and management of the natural area reserves system pursuant to section 195-3; and
- {3} (C) The youth conservation corps established under chapter 193.’’

SECTION 9. There is appropriated out of the land conservation fund of the State of Hawaii established pursuant to section 173A-5, the sum of \$1,100,000 or so much thereof as may be necessary for fiscal year 2005-2006 for the purchase of agriculture easements to protect farm and ranch lands throughout the state. This appropriation will use and preserve federal farm and ranch land protection program funding for agricultural and cultural lands in Hawaii.

The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 10. The director of finance shall transfer to the credit of the land conservation fund on the effective date of this Act, all unexpended or unencumbered balances remaining in the fund for the environment scheduled for repeal on the effective date of this Act.

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 12. This Act shall take effect on July 1, 2005.

(Approved June 23, 2005.)

**ACT 157**

H.B. NO. 1017

A Bill for an Act Relating to Solar Energy.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that section 196-7, Hawaii Revised Statutes, allows the installation of a solar energy device on any single-family residential dwelling or townhouse by its owner, regardless of any covenant, term, provision, condition, codicil, or contract to the contrary. The legislature finds that corresponding amendments should now be made to section 514A-89, Hawaii Revised Statutes.

The purpose of this Act is to, among other things:

- (1) Allow owners of single-family residential dwellings and townhouses to install solar energy devices without board approval, provided that the devices are registered with the appropriate homeowner, community or condominium association, or cooperative, if any; and
- (2) Require “private entities” such as homeowners, community and condominium associations, and cooperatives to adopt rules regarding the placement of solar energy devices.

SECTION 2. Section 196-7, Hawaii Revised Statutes, is amended to read as follows:

~~“[§196-7] Placement of solar energy devices. (a) Notwithstanding any law to the contrary, no person shall be prevented by any covenant, declaration, bylaws, restriction, deed, lease, term, provision, condition, codicil, [or] contract, or similar binding agreement, however worded, from installing a solar energy device on any single-family residential dwelling or townhouse that the person owns. Any provision in any lease, instrument, or contract contrary to the intent of this section shall be void[.] and unenforceable.~~

~~[(b) For the purposes of this section, “solar energy device” means any identifiable facility, equipment, apparatus, or the like, including a photovoltaic cell application, that is applicable to a single-family residential dwelling or townhouse and makes use of solar energy for heating, cooling, or reducing the use of other types of energy dependent upon fossil fuel for generation.]~~

~~(b) Every private entity shall adopt rules by December 31, 2006, that provide for the placement of solar energy devices. The rules shall facilitate the placement of solar energy devices and shall not unduly or unreasonably restrict that placement so as to render the device more than twenty-five per cent less efficient or to increase the cost of the device by more than fifteen per cent. No private entity shall assess or charge any homeowner any fees for the placement of any solar energy device.~~

~~(c) Any person may place a solar energy device on any single-family residential dwelling or townhouse unit owned by that person, provided that:~~

- ~~(1) The device is in compliance with the rules and specifications adopted pursuant to subsection (b);~~
- ~~(2) The device is registered with the private entity of record within thirty days of installation; and~~
- ~~(3) If the device is placed on a common element or limited common element as defined by a project’s declaration, the homeowner shall first obtain the consent of the private entity; provided further that such consent shall be given if the homeowner agrees in writing to:
 
  - ~~(A) Comply with the private entity’s design specification for the installation of the device;~~
  - ~~(B) Engage a duly licensed contractor to install the device; and~~
  - ~~(C) Within fourteen days of approval of the solar device by the private entity, provide a certificate of insurance naming the private entity as an additional insured on the homeowner’s insurance policy.~~~~

~~(d) If a solar energy device is placed on a common element or limited common element:~~

- ~~(1) The owner and each successive owner of the single-family residential dwelling or townhouse unit on which the device is placed shall be responsible for any costs for damages to the device, the common elements, limited common elements, and any adjacent units, arising or resulting from the installation, maintenance, repair, removal, or replacement of the device. The repair, maintenance, removal, and replacement responsibilities shall be assumed by each successive owner until the solar energy device has been removed from the common elements or limited common elements. The owner and each successive owner shall at all times have and maintain a policy of insurance covering the obligations of the owner under this paragraph and shall name the private entity as an additional insured under said policy; and~~
- ~~(2) The owner and any successive owner of the single-family residential dwelling or townhouse unit on which the device is placed shall be~~

responsible for removing the solar energy device if reasonably necessary or convenient for the repair, maintenance, or replacement of the common elements or limited common elements.

(e) If a material or labor roof warranty exists at the time a solar energy device is installed on a roof that is a common element or limited common element, the homeowner shall obtain confirmation in writing from the company that issued the warranty that the installation of the solar energy device will not void the roof warranty. The homeowner shall provide the private entity with a copy of the confirmation.

(f) For the purposes of this section:

“Private entity” means any association of homeowners, community association, condominium association, cooperative, or any other non-governmental entity with covenants, bylaws, and administrative provisions with which the homeowner’s compliance is required.

“Solar energy device” means any identifiable facility, equipment, apparatus, or the like, including a photovoltaic cell application, that is applicable to a single-family residential dwelling or townhouse and makes use of solar energy for heating, cooling, or reducing the use of other types of energy dependent upon fossil fuel for generation; provided that “solar energy device” shall not include skylights or windows.”

SECTION 3. Section 514A-89, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-89 Certain work prohibited.** (a) No apartment owner shall do any work [~~which~~] that could jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement or hereditament[~~, nor may any~~].

(b) No apartment owner shall add any material structure or excavate any additional basement or cellar, without first obtaining in every such case the consent of seventy-five per cent of the apartment owners, together with the consent of all apartment owners whose apartments or limited common elements appurtenant thereto are directly affected[~~, being first obtained; provided that nonmaterial~~].

(c) Nonmaterial structural additions to the common elements, including, without limitation, [~~the installation of solar energy devices, or~~] additions to or alterations of an apartment made within [~~such~~] the apartment or within a limited common element appurtenant to and for the exclusive use of the apartment shall require approval only by the board of directors of the association of apartment owners and such percentage, number, or group of apartment owners as may be required by the declaration or bylaws[~~;~~]; provided that the installation of solar energy devices shall be allowed on single-family residential dwellings or townhouses pursuant to the provisions in section 196-7.

As used in this section:

“Nonmaterial structural additions to the common elements”, [as used in this section,] means a structural addition to the common elements [~~which~~] that does not jeopardize the soundness or safety of the property, reduce the value thereof, impair any easement or hereditament, detract from the appearance of the project, interfere with or deprive any nonconsenting owner of the use or enjoyment of any part of property, or directly affect any nonconsenting owner.

[For purposes of this section, “solar energy device”] “Solar energy device” means any new identifiable facility, equipment, apparatus, or the like which makes use of solar energy for heating, cooling, or reducing the use of other types of energy dependent upon fossil fuel for its generation; provided that if the equipment sold cannot be used as a solar device without its incorporation with other equipment, it must be installed in place and ready to be made operational in order to qualify as a



“solar energy device”[-]; and provided further that “solar energy device” shall not include skylights or windows.

“Townhouse” means a series of individual houses having architectural unity and a common wall between each unit; provided that each unit extends from the ground to the roof.”

SECTION 4. Act 164, Session Laws of Hawaii 2004, is amended by amending part VI, section -140 of the new chapter to read as follows:

**“§ -140 Additions to and alterations of condominium.** (a) No unit owner shall do any work that may jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement, as reasonably determined by the board.

(b) Subject to the provisions of the declaration, no unit owner may make or allow any material addition or alteration, or excavate an additional basement or cellar, without first obtaining the written consent of sixty-seven per cent of the unit owners, the consent of all unit owners whose units or appurtenant limited common elements are directly affected, and the approval of the board, which shall not unreasonably withhold such approval. The declaration may limit the board’s ability to approve or condition a proposed addition or alteration; provided that the board shall always have the right to disapprove a proposed addition or alteration that the board reasonably determines could jeopardize the soundness or safety of the property, impair any easement, or interfere with or deprive any nonconsenting owner of the use or enjoyment of any part of the property.

(c) Subject to the provisions of the declaration, nonmaterial additions to or alterations of the common elements or units, including, without limitation, ~~the installation of solar energy devices, or~~ additions to or alterations of a unit made within the unit or within a limited common element appurtenant to and for the exclusive use of the unit, shall require approval only by the board, which shall not unreasonably withhold ~~such~~ the approval, and such percentage, number, or group of unit owners as may be required by the declaration or bylaws[-]; provided that the installation of solar energy devices shall be allowed on single-family residential dwellings or townhouses pursuant to the provisions in section 196-7.

As used in this subsection:

“Nonmaterial additions and alterations”, ~~[as used in this subsection,]~~ means an addition to or alteration of the common elements or a unit that does not jeopardize the soundness or safety of the property, reduce the value thereof, impair any easement, detract from the appearance of the project, interfere with or deprive any nonconsenting owner of the use or enjoyment of any part of property, or directly affect any nonconsenting owner.

“Solar energy device”~~[-; for purposes of this subsection,]~~ means any new identifiable facility, equipment, apparatus, or the like which makes use of solar energy for heating, cooling, or reducing the use of other types of energy dependent upon fossil fuel for its generation; provided that if the equipment sold cannot be used as a solar device without its incorporation with other equipment, it shall be installed in place and be ready to be made operational in order to qualify as a “solar energy device”[-]; provided further that “solar energy device” shall not include skylights or windows.

“Townhouse” means a series of individual houses, having architectural unity and a common wall between each unit, provided that each unit extends from the ground to the roof.

(d) Notwithstanding any other provisions to the contrary in this chapter or in any declaration or bylaws:

(1) Regarding the installment of telecommunications equipment:

- (A) The board shall have the authority to install or cause the installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements of the project; provided that the same shall not be installed upon any limited common element without the consent of the owner or owners of the unit or units for the use of which the limited common element is reserved; and
- (B) The installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements by the board shall not be deemed to alter, impair, or diminish the common interest, common elements, and easements appurtenant to each unit, or to be a structural alteration or addition to any building constituting a material change in the plans of the project filed in accordance with sections -33 and -34; provided that no such installation shall directly affect any nonconsenting unit owner; and
- (2) Regarding the abandonment of telecommunications equipment:
  - (A) The board shall be authorized to abandon or change the use of any television signal distribution and telecommunications equipment due to technological or economic obsolescence or to provide an equivalent function by different means or methods; and
  - (B) The abandonment or change of use of any television signal distribution or telecommunications equipment by the board due to technological or economic obsolescence or to provide an equivalent function by different means or methods shall not be deemed to alter, impair, or diminish the common interest, common elements, and easements appurtenant to each unit or to be a structural alteration or addition to any building constituting a material change in the plans of the project filed in accordance with sections -33 and -34.

As used in this subsection:

“Directly affect” means the installation of television signal distribution and telecommunications equipment in a manner which would specially, personally, and adversely affect a unit owner in a manner not common to the unit owners as a whole.

“Television signal distribution” and “telecommunications equipment” shall be construed in their broadest possible senses in order to encompass all present and future forms of communications technology.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on September 1, 2005.

(Approved June 24, 2005.)

**ACT 158**

S.B. NO. 1661

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to support children with disabilities and their families and to enable the department of education to efficiently address

issues relating to providing a free, appropriate public education to children with disabilities by:

- (1) Specifying the time period within which a hearing shall be requested by a parent or guardian of a child with a disability, or by the department, on matters relating to the identification, evaluation, program, or placement of a child with a disability; and
- (2) Exempting the parent or guardian of a child with a disability from the time limits on requesting a hearing, when the failure to request the hearing was due to the misrepresentation or withholding of information by the department.

SECTION 2. Section 302A-443, Hawaii Revised Statutes, is amended to read as follows:

“~~[§302A-443]~~ **Administrative hearing procedures and subpoena power relating to the education of handicapped children~~[-]~~ with a disability.**

(a) An impartial hearing may be requested by any parent or guardian of a handicapped child with a disability, or by the department, on any matter relating to the identification, evaluation, program, or placement of a handicapped child~~[-]~~ with a disability; provided that the hearing is requested:

- (1) Within two years of the date the parent, guardian, or department knew or should have known about the alleged action that formed the basis of the request for a hearing; and
- (2) Notwithstanding paragraph (1), within ninety days of a unilateral special education placement, where the request is for reimbursement of the costs of the placement.

(b) Subsection (a) shall not apply to a parent or guardian of a child with a disability if the parent or guardian was prevented from requesting the hearing due to:

- (1) Specific misrepresentations by the department that it had resolved the problem that formed the basis of the complaint; or
- (2) The department's withholding from the parent or guardian information that was required by state or federal laws and regulations to provide a free, appropriate public education to a child with a disability.

(c) The department shall adopt rules that conform to the requirements of any applicable federal statutes or regulations pertaining to the impartial hearing based on the education of a handicapped child~~[-]~~ with a disability. The rules shall require that any party may be present at the proceeding, be accompanied and advised by counsel or individuals with special knowledge or training with respect to the problems of handicapped children with a disability, may require witnesses to be under oath, cross-examine witnesses, and obtain a written or electronic verbatim record of the proceedings.

~~(b)~~ (d) Any party to these hearings or the hearings officer shall have the right to compel the attendance of witnesses upon subpoena issued by the hearings officer. The fees for attendance shall be the same as for the fees of witnesses before circuit court. In case of the failure of any person to comply with a subpoena, a circuit court judge of the judicial circuit in which the witness resides, upon application of the hearings officer, shall compel attendance of the person.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 24, 2005.)

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

PART I  
PURPOSE

SECTION 1. Hawaii depends on teachers to produce the intellectual capital that is the foundation of the State's future. Virtually everyone will agree that effective teaching is of high importance in the development of a successful educational system. Although the State values its teachers there is much more that can be done to:

- (1) Recruit teachers aggressively;
- (2) Compensate teachers in accordance with their value;
- (3) Support teachers to further develop their craft; and
- (4) Create vehicles for them to share their expertise.

Due to the State's teacher shortage, these are not issues that can wait. New federal mandates such as the No Child Left Behind Act require the states to achieve certain goals and maintain them. Without proper staffing with quality instructors and a means to attract such personnel, the State will certainly fall behind in meeting the national standards.

It is not only regular education classrooms that suffer from a shortage of teachers. Alternative learning environments such as the comprehensive school alienation program do as well. Students eligible for such programs often require additional personal attention from their instructors. If they do not receive it or cannot be placed in such specialized programs due to a lack of alternative education teachers, it can exacerbate the impact of the teacher shortage on the classroom management and academic achievement of regular education classrooms.

The structure of the portions of the Act that follows reflects, in rough chronological order, the development of a career in teaching.

Part II creates the promising teacher cadet program. Originally an initiative of the department of education, this program has since developed into a separate, 501(c)(3) nonprofit organization. It works with all of the major Hawaii-based teacher training programs and attempts to identify and support prospective teachers while they are still in their high school years.

Part III encourages the University of Hawaii college of education, to review their admission policy to make it easier for entering freshmen to declare as education majors.

Part IV deals with issues relevant to new hires, such as job offers, pay, and orientation procedures, as well as establishes a state teacher induction program to mentor new teachers.

Part V aims at facilitating the licensure of employees entering the system by expanding the means by which people may become licensed, thus increasing the pool of highly qualified teachers. This would include licensure by means of professional experience, college degrees in relevant fields, or providing reciprocity for out-of-state licensure and national board certification. Various incentives to encourage in-service teachers to seek national board certification are also included in this part.

PART II  
TEACHER CADET PROGRAM

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§302A- Hawaii teacher cadet program fund.** (a) There is established the Hawaii teacher cadet program fund as a separate fund of the Hawaii alliance for future teachers, a Hawaii nonprofit organization. Moneys received from the state, county, or federal government, private contributions of cash or other property, and the income and capital gains earned by the fund shall constitute its assets.

(b) The Hawaii alliance for future teachers shall expend moneys from the fund in the form of either grants to organizations or contracts with private vendors to provide programs for students who possess a high level of academic achievement and the personality traits found in good teachers to consider teaching as a career in accordance with this section.

(c) The fund may receive contributions, grants, endowments, or gifts in cash or otherwise from all sources, including corporations or other businesses, foundations, government, individuals, and other interested parties. The legislature intends that public and private sectors review and investigate all potential funding sources. The State may appropriate moneys to the fund.

(d) The Hawaii alliance for future teachers shall appoint the members of the Hawaii teacher cadet program advisory board, which shall be responsible for:

- (1) Soliciting and otherwise raising funds for the fund;
- (2) Establishing criteria for the expenditure of funds;
- (3) Reviewing grant proposals using criteria established by Hawaii alliance for future teachers; and
- (4) Making recommendations for grants and other specific expenditures.

Members of the advisory board shall be stakeholders in Hawaii's public educational system, including students, parents, alumni, principals, community and business leaders, and representatives from the department of education and the department of accounting and general services, who shall be represented on the advisory board.

(e) In managing the moneys in the fund, the Hawaii alliance for future teachers shall exercise ordinary business care and prudence given the facts and circumstances prevailing at the time of action or decision. In doing so, the Hawaii alliance for future teachers shall consider its long- and short-term needs in carrying out its purposes, its present and anticipated financial requirements, expected total return on its investments, price trends, and general economic conditions.

(f) There may be an endowment component of the fund, and the Hawaii alliance for future teachers may accumulate net income and add the same to the principal.

(g) The use of any state moneys may be restricted by the legislation appropriating these moneys to the fund.

(h) The Hawaii alliance for future teachers may expend principal from the fund for the purposes of the fund.

(i) Any organization submitting a proposal to the Hawaii alliance for future teachers for moneys shall meet the following standards at the time of application:

- (1) Be a for-profit organization duly registered under the laws of the State, or be a nonprofit organization determined by the Internal Revenue Service to be exempt from the federal income tax, or be an agency of the State or a county;
- (2) In the case of a nonprofit organization, have a governing board whose members have no material conflict of interest and serve without compensation;

- (3) In the case of an applicant that is not a state or county government agency, have bylaws or policies that describe the manner in which business is conducted and policies that relate to the management of a potential situation involving a conflict of interest;
  - (4) Have experience with the project or in the program area for which the proposal is being made; and
  - (5) Be licensed and accredited, as applicable, in accordance with the requirements of federal, state, and county governments.
- (j) All proposals submitted to the Hawaii alliance for future teachers for moneys shall be approved by the department for consistency in meeting standards for public schools.
- (k) Organizations or agencies to which moneys are awarded shall agree to comply with the following conditions before receiving the award:
- (1) Use persons qualified to engage in the activity to be funded;
  - (2) Comply with the applicable federal, state, and county laws; and
  - (3) Comply with any other requirements prescribed by the Hawaii alliance for future teachers to ensure adherence by the recipient of the award with applicable federal, state, and county laws and with the purposes of this section.
- (l) Chapter 103D shall not apply to organizations or agencies that apply for grants or contracts under this section; provided that the Hawaii alliance for future teachers shall be held accountable for the use of the funds under a contract with the department.
- (m) Any contract awarded by the Hawaii alliance for future teachers shall be made with as much competition as is practical to execute its purposes.
- (n) The fund shall be audited annually by an independent auditor. The results of each annual audit shall be submitted to the department not later than thirty days from the date the Hawaii alliance for future teachers receives the audit results. In addition, the Hawaii alliance for future teachers shall retain for a period of three years and permit the department, state legislators, and the auditor, or their duly authorized representatives, to inspect and have access to any documents, papers, books, records and other evidence that is pertinent to the fund.
- (o) The fund shall not be placed in the state treasury, and the State shall not administer the fund, nor shall the State be liable for the operation or solvency of the fund of the Hawaii alliance for future teachers.
- (p) For every dollar of state moneys granted by the fund to the project, there shall be a minimum of \$1 in value matched by the Hawaii alliance for future teachers in cash, or the fair market value of in-kind donations, real property, or any other item of value from federal, state, or county governments, private entities, community-based organizations, non-profit organizations, or individuals.
- (q) The superintendent of education shall submit an annual report of the progress of the Hawaii teacher cadet program fund no later than twenty days prior to the convening of each regular session of the legislature.”

### PART III UNIVERSITY OF HAWAII

SECTION 3. Currently, entering freshman students interested in a career in education at the University of Hawaii are not allowed to declare a major in education until fulfilling numerous requirements that can delay acceptance for over a year. On average, it would take a student at least five and a half years to complete a degree in education. This is unacceptable considering the State’s teacher shortage.

The purpose of this part is to require the University of Hawaii to review its admission policies for the college of education.

SECTION 4. The University of Hawaii shall review its college of education's admission standards and consider allowing incoming freshman to declare education as their major and enable them to graduate within four years.

SECTION 5. To further strengthen teacher preparation and to build the University of Hawaii school of education's capacity to meet the demand for more teachers to teach in Hawaii's public schools, the University of Hawaii shall increase the full time equivalent teacher education faculty positions by five additional full-time equivalent positions each year until fiscal year 2014-2015, to allow the number of participants who complete the program to increase by one hundred per cent over the year 2004 total, so long as recruitment to the college warrants the need for additional facilities.

#### PART IV NEW TEACHER HIRES

SECTION 6. The difficulties that face newly hired teachers discourage many people from entering the profession and often lead new teachers to quit shortly after they are hired. For instance, the legislature finds it unacceptable that it takes the department of education six to eight weeks to provide new employees and interdepartmental transfers with their first paycheck. The bottom line is that the private sector by and large pays its employees in a timely manner and the public sector should not be allowed to aim for a lower standard, especially when the technological and procedural capabilities to mitigate this problem are so clearly present and so easily applicable. Employees deserve to be paid for the work they do, especially new teachers, who have so much to adapt to and prepare for without having to deal with the added stress of tardy paychecks.

Another aid in the retention of new teachers is the new personnel orientation handbook recently developed by the department. The handbook is used as a tool to assist new employees to adapt to the operations of the department. Moreover, retention of personnel is partly influenced by how quickly an employee becomes familiar with an organization's system. The legislature finds that it would be beneficial to include a new teacher section in the handbook to give newcomers a good first impression of how the department operates and cares for its personnel as well as serve as a reference guide.

The purpose of this part is to:

- (1) Ensure that new hires of the department of education are paid in a timely manner and allow payments of partial wages to mitigate the financial hardships created by delayed paychecks;
- (2) Provide all newly hired teachers with a teacher handbook; and
- (3) Establish the statewide teacher induction program.

SECTION 7. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§302A- Newly hired employees; paycheck deficits; partial wages.** (a) The department shall establish and implement appropriate policies, procedures, technology, and accountability measures to ensure that newly hired employees receive timely and accurate wages.

(b) All newly hired employees shall receive their first paycheck no later than the second pay period after the date of their hire by the department.

(c) If the department is unable to pay the total wages due a newly hired employee pursuant to subsection (b), the department may pay the newly hired employee on the day the newly hired employee would have received pay, partial

wages in an amount not less than fifty per cent of the amount due for the second pay period and for each consecutive pay period thereafter in which the department maintains a paycheck deficit with the newly hired employee. The amounts received shall be deducted from the total wages due for the respective pay period. Once the department resolves the paycheck deficit, the newly hired employee shall no longer receive partial wages as provided by this subsection.”

SECTION 8. By December 31, 2005, the department shall adopt rules pursuant to chapter 91, Hawaii Revised Statutes, as may be necessary to administer section 7.

SECTION 9. The department of education shall provide each newly hired teacher with the new teacher orientation handbook to assist in their transition into the department’s school system. The handbook shall serve as a reference guide and to provide the new employees with information on the following:

- (1) Professional development and incentive programs;
- (2) License requirements; and
- (3) Other useful information to assist new teachers with their familiarity of the department’s organization and educational system.

SECTION 10. The department of education shall establish and maintain a standardized statewide teacher induction program that is available to every newly hired teacher. The program shall ensure that the new teacher to mentor ratio is no greater than fifteen to one and that all mentors are specially skilled and trained to work effectively with newly hired teachers as determined by the department.

#### PART V CERTIFICATION, LICENSURE, AND RECIPROCITY

SECTION 11. The legislature concurs with the findings of the latest study conducted by Stanford University School of Education researchers that demonstrate that “certified teachers consistently produce significantly stronger student achievement gains than do uncertified teachers.” The study defined certified teachers as those holding standard state certification granted to teachers who have completed an approved teacher education program. In view of its longstanding commitment to public education and its support of the work of the National Commission on Teaching and America’s Future – Hawaii Policy Group, the legislature seeks to improve student achievement by adopting policies that promote teacher quality.

Where preceding parts of this Act address teacher preparation, recruitment, and professional development, in this part the legislature focuses on ensuring an adequate pool of licensed teachers available for employment by the department of education. Policies must be reviewed to determine the improvements needed to provide caring, competent, and qualified teachers for all Hawaii’s students. Together with the efforts described in other parts of this Act, this review will contribute to building a strong, stable teaching force in our public schools.

SECTION 12. Section 302A-802, Hawaii Revised Statutes, is amended to read as follows:

“**§302A-802 Licensing standards[.]; policies.** (a) The board shall establish licensing standards that govern teacher licensing in Hawaii. Licensing standards established by the board shall be adopted as rules under chapter 91 unless otherwise specified in this subpart.



(b) In the development of its standards, the board shall consider the existing teacher applicant pool that is available in the State and the level of the qualification of these applicants, as well as the nature and availability of existing preservice higher education teacher training programs. ~~[The board shall also consider alternative routes to licensing, such as national teacher examinations that certify competency in subject areas or programs taught in the public schools.]~~

(c) The board shall adopt policies, exempt from chapters 91 and 92, to initiate the following:

- (1) Develop a plan for licensing more individuals with practical experience for teaching in vocational/technical programs;
- (2) Develop a plan to accept teachers from any state as long as they have completed state-approved teacher education programs and pass relevant Hawaii teacher examinations or their equivalent;
- (3) Clarify the requirements, on a state-by-state basis, for out-of-state licensed teachers to obtain a license in Hawaii;
- (4) Develop a plan to facilitate licensing for those who intend to teach in Hawaii immersion programs, the island of Niihau, or any other extraordinary situation as defined by the superintendent or the superintendent's designee; and
- (5) Pursue full teacher license reciprocity with the mid-Atlantic states, California, Colorado, Illinois, Michigan, New York, Oregon, and Washington.'

SECTION 13. The Hawaii teacher standards board shall submit a report of its progress and recommendations regarding its licensing standards and development of its policies to the legislature not later than twenty days before the convening of the regular session of 2006.

SECTION 14. The Hawaii teacher standards board shall review alternative licensing requirements to replace the PRAXIS examination requirement. The review of alternative requirements shall include but not be limited to the consideration of requiring a minimum amount of years of teaching experience to replace the PRAXIS examination requirement.

SECTION 15. To ensure that the Hawaii teacher standards board is able to recruit and maintain a stable staff to process licenses in a timely manner, the legislature authorizes the conversion of its nine temporary positions to nine permanent full-time equivalent positions. To expedite the hiring process, the Hawaii teacher standards board shall be exempt from chapter 76, Hawaii Revised Statutes, regarding these positions.

SECTION 16. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2005-2006 for the operation of the Hawaii teacher standards board.

The sum appropriated shall be expended by the Hawaii teacher standards board for the purposes of this part.

## PART VI MISCELLANEOUS

SECTION 17. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 18. It is the intent of this Act not to jeopardize the receipt of any federal aid nor to impair the obligation of the State or any agency thereof to the holders of any bond issued by the State or by any such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any such modification with reasons therefor to the legislature at its next session thereafter for review by the legislature.

SECTION 19. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 20. This Act shall take effect upon its approval; provided that section 16 shall take effect on July 1, 2005.

(Approved June 24, 2005.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 160

H.B. NO. 1453

A Bill for an Act Relating to Animals.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 560, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§560: Trusts for domestic or pet animals.** (a) A trust for the care of one or more designated domestic or pet animals shall be valid. The trust terminates when no living animal is covered by the trust. A governing instrument shall be liberally construed to bring the transfer within this section, to presume against the precatory or honorary nature of its disposition, and to carry out the general intent of the transferor. Extrinsic evidence shall be admissible in determining the transferor’s intent.

(b) A trust for the care of one or more designated domestic or pet animals shall be subject to the following provisions:

- (1) Except as expressly provided otherwise in the instrument creating the trust, and notwithstanding section 554A-3, no portion of the principal or income of the trust may be converted to the use of the trustee or to a use contrary to the trust’s purposes or for the benefit of a covered animal;
- (2) Upon termination, the trustee shall transfer the unexpended trust property in the following order:
  - (A) As directed in the trust instrument;
  - (B) If there is no such direction in the trust instrument and if the trust was created in a non-residuary clause in the transferor’s will, then under the residuary clause in the transferor’s will; and
  - (C) If no taker is produced by the application of subparagraph (A) or (B), then to the transferor’s heirs, determined according to section 560:2-711;
- (3) The intended use of the principal or income may be enforced by an individual designated for that purpose in the trust instrument or, if none, by an individual appointed by a court having jurisdiction over the matter and parties, upon petition by an individual;

- (4) Except as ordered by the court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee shall be required by reason of the existence of the fiduciary relationship of the trustee;
- (5) The court may reduce the amount of the property transferred if it determines that the amount substantially exceeds the amount required for the intended use and the court finds that there will be no substantial adverse impact in the care, maintenance, health, or appearance of the designated domestic or pet animal. The amount of the reduction, if any, shall pass as unexpended trust property under paragraph (2);
- (6) If a trustee is not designated or no designated trustee is willing and able to serve, the court shall name a trustee. The court may order the transfer of the property to another trustee if the transfer is necessary to ensure that the intended use is carried out and if a successor is not designated in the trust instrument or if no designated successor trustee agrees to serve and is able to serve. The court may also make other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this section; and
- (7) The trust is exempt from the operation of chapter 525, the Uniform Statutory Rule Against Perpetuities Act.”

SECTION 2. Section 560:8-101, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Except as provided elsewhere in this chapter, on the effective date of this chapter:

- (1) The chapter applies to any wills of decedents dying thereafter;
- (2) The chapter applies to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this chapter;
- (3) Every executor of a will admitted to a probate prior to July 1, 1977 in this State and every administrator appointed prior to July 1, 1977 by a court of this State shall be a supervised personal representative with respect to the estate, and every guardian of the property appointed prior to July 1, 1976 by a court of this State shall be a guardian of the property, with only the powers conferred by this chapter and subject to the duties imposed by this chapter with respect to any act occurring or done thereafter. Every guardian of a person holding an appointment on that date continues to hold the appointment but has only the powers conferred by this chapter and is subject to the duties imposed by this chapter with respect to any act occurring or done thereafter;
- (4) The consequences of an act done before the applicable effective date in any proceeding and any accrued right is not impaired by this chapter. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before July 1, 1977, the provisions of such statute shall remain in force with respect to that right;
- (5) Any rule of construction or presumption provided in this chapter applies to instruments executed and multiple-party accounts opened before July 1, 1976 unless there is a clear indication of a contrary intent;
- (6) Notwithstanding any of the above, this chapter shall not affect any property or other rights accrued under the case and statutory law of this

State, including but not limited to the law relating to intestacy, dower and curtesy (chapters 532 and 533), which became vested prior to July 1, 1977[.];

- (7) Section 560: applies to governing instruments executed on or after the effective date of Act .”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved June 24, 2005.)

Note

- 1. Edited pursuant to HRS §23G-16.5.

ACT 161

S.B. NO. 669

A Bill for an Act Relating to Animal Quarantine Facilities.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the animal quarantine program is essential in reducing the likelihood that the rabies virus will be introduced and established in Hawaii and in preventing the introduction of diseases and alien species, including external animal parasites such as ticks.

Recent animal quarantine program modifications have permitted substantial numbers of dogs and cats to qualify for entry into the State without undergoing confinement in quarantine. The reduced number of animals quarantined has also resulted in a reduction of the area utilized for the kenneling of animals at the animal quarantine station. Therefore, measures for alternative uses of areas not utilized for quarantine of animals should be established and moneys received for these alternative uses should be used to defray expenditures and minimize fees charged to users of the animal quarantine program.

The purpose of this Act is to:

- (1) Authorize the board of agriculture to allow use of animal quarantine facilities for reasonable rents or fees;
- (2) Require that all income received from the rental of quarantine facilities be used to defray costs from the animal quarantine program; and
- (3) Provide the means to deposit moneys derived from use of animal quarantine facilities and property into the animal quarantine special fund.

SECTION 2. Chapter 142, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§142- Authority to contract or rent facilities. The board of agriculture is authorized to contract with third parties for the use or rental of animal quarantine property or facilities; provided that:

- (1) The board determines the property or facilities are not required for use by the animal quarantine program during the term of use by the third party;
- (2) The property or facilities shall be leased or rented at fair market value; and

- (3) The property or facilities shall be used only by the third party.

Revenues generated by the use or rental of the animal quarantine property or facilities shall be used to defray the operational costs of the animal quarantine program and to minimize animal quarantine fees.”

SECTION 3. Section 142-28.5, Hawaii Revised Statutes, is amended to read as follows:

“**§142-28.5 Animal quarantine special fund.** There is established the animal quarantine special fund to be administered by the board of agriculture. All moneys received by the board of agriculture ~~[as fees]~~ from:

- (1) Fees for the quarantine of cats, dogs, and other carnivores pursuant to this chapter[;];
- (2) Moneys received for the use of animal quarantine property or facilities pursuant to section 142- ; or [any state]
- (3) State appropriations or other moneys made available ~~[for the cost of quarantine]~~,

shall be deposited into the special fund. All interest earned or accrued on moneys deposited in the special fund shall become part of the special fund. Moneys in the special fund shall be expended to cover all costs of quarantine but not limited to the costs of salaries, fringe benefits, operating expenses, including the defraying of quarantine fees, equipment, motor vehicles, contract with any qualified person or entity for animal care services, operation and maintenance of the quarantine station, and promotional expenses. A reserve shall be appropriated and maintained in the special fund to cover contingency costs, including but not limited to accrued vacation leave, unemployment insurance, and workers’ compensation.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on July 1, 2005.

(Approved June 24, 2005.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 162**

S.B. NO. 1362

A Bill for an Act Relating to Abandoned Vehicles.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 290-1, Hawaii Revised Statutes, is amended to read as follows:

“**§290-1 Disposition by counties of certain abandoned vehicles.** (a) The counties may cause vehicles that have been abandoned to be taken into custody and disposed of[~~, which have been abandoned. A~~]. For the purposes of this subsection, a vehicle is “abandoned”[~~, for the purposes of this subsection,~~] if it is defined to be abandoned by an ordinance of the county in which the vehicle is located[~~; in~~]. In the absence of such an ordinance, a vehicle is “abandoned” if it is left unattended for a continuous period of more than twenty-four hours and it is unlawfully parked on any public highway or other public property[~~;~~] or private lands defined as a setback,

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shoulder, easement, or right of way that is adjacent to or part of a public highway. The mayors of the several counties may designate an agency within their counties to carry out the functions and requirements of this section. The term "agency" means any office, department, or other governmental unit of the county.

(b) The housing and community development corporation of Hawaii may cause vehicles ~~[which]~~ that have been abandoned on any public housing property owned, managed, or administered by the housing and community development corporation of Hawaii~~;~~ to be taken into custody and disposed of. ~~[A] For the purposes of this subsection, a vehicle is "abandoned" [for the purposes of this subsection,]~~ if it is left unattended for a continuous period of more than twenty-four hours after a notice is conspicuously posted on the vehicle that the vehicle is subject to disposal pursuant to this subsection.

(c) At the request of the landowner, a county may cause vehicles to be taken into custody and disposed of that have been abandoned on roads for which dedication to the State or county is pending. For purposes of this subsection, a vehicle is deemed abandoned if it is left unattended for a continuous period of more than twenty-four hours after a notice is conspicuously posted on the vehicle stating that the vehicle is subject to disposal pursuant to this subsection."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 27, 2005.)

## ACT 163

H.B. NO. 393

A Bill for an Act Relating to the Counties.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 46-1.5, Hawaii Revised Statutes, is amended to read as follows:

**"§46-1.5 General powers and limitation of the counties.** Subject to general law, each county shall have the following powers and shall be subject to the following liabilities and limitations:

- (1) Each county shall have the power to frame and adopt a charter for its own self-government, which shall establish the county executive, administrative, and legislative structure and organization, including, but not limited to, the method of appointment or election of officials, their duties, responsibilities, and compensation, and the terms of their office~~[-];~~
- (2) Each county shall have the power to provide for and regulate the marking and lighting of all buildings and other structures that may be obstructions or hazards to aerial navigation, so far as may be necessary or proper for the protection and safeguarding of life, health, and property~~[-];~~
- (3) Each county shall have the power to enforce all claims on behalf of the county and approve all lawful claims against the county, but shall be prohibited from entering into, granting, or making in any manner any contract, authorization, allowance payment, or liability contrary to the provisions of any county charter or general law~~[-];~~

- (4) Each county shall have the power to make contracts and to do all things necessary and proper to carry into execution all powers vested in the county or any county officer[-];
- (5) Each county shall have the power to maintain channels, whether natural or artificial, including their exits to the ocean, in suitable condition to carry off storm waters; and to remove from the channels, and from the shores and beaches, any debris that is likely to create an unsanitary condition or become a public nuisance; provided that, to the extent any of the foregoing work is a private responsibility, the responsibility may be enforced by the county in lieu of the work being done at public expense. Counties also shall have the power to construct, acquire by gift, purchase, or by the exercise of eminent domain, reconstruct, improve, better, extend, and maintain projects or undertakings for the control of and protection against floods and flood waters, including the power to drain and rehabilitate lands already flooded, and to enact zoning ordinances providing that lands deemed subject to seasonable, periodic, or occasional flooding shall not be used for residence or other purposes in a manner as to endanger the health or safety of the occupants thereof, as required by the Federal Flood Insurance Act of 1956 (chapter 1025, Public Law 1016)[-];
- (6) Each county shall have the power to exercise the power of condemnation by eminent domain when it is in the public interest to do so[-];
- (7) Each county shall have the power to exercise regulatory powers over business activity as are assigned to them by chapter 445 or other general law[-];
- (8) Each county shall have the power to fix the fees and charges for all official services not otherwise provided for[-];
- (9) Each county shall have the power to provide by ordinance assessments for the improvement or maintenance [~~assessments~~] of districts within the county[-];
- (10) Except as otherwise provided, no county shall have the power to give or loan credit to, or in aid of, any person or corporation, directly or indirectly, except for a public purpose[-];
- (11) Where not within the jurisdiction of the public utilities commission, each county shall have the power to regulate by ordinance the operation of motor vehicle common carriers transporting passengers within the county and adopt and amend rules the county deems necessary for the public convenience and necessity[-];
- (12) Each county shall have the power to enact and enforce ordinances necessary to prevent or summarily remove public nuisances and to compel the clearing or removal of any public nuisance, refuse, and uncultivated undergrowth from streets, sidewalks, public places, and unoccupied lots, and in these connections, to impose and enforce liens upon the property for the cost to the county of removing and completing the necessary work where the owners fail, after reasonable notice, to comply with the ordinances. The authority provided by this paragraph shall not be self-executing, but shall become fully effective within a county only upon the enactment or adoption by the county of appropriate and particular laws, ordinances, or rules defining "public nuisances" with respect to each county's respective circumstances. The counties shall provide the property owner with the opportunity to contest the summary action and to recover the owner's property[-];
- (13) Each county shall have the power to enact ordinances deemed necessary to protect health, life, and property, and to preserve the order and

security of the county and its inhabitants on any subject or matter not inconsistent with, or tending to defeat, the intent of any state statute, provided also that the statute does not disclose an express or implied intent that the statute shall be exclusive or uniform throughout the State[-];

- (14) Each county shall have the power to make and enforce within the limits of the county all necessary ordinances covering: all local police matters; all matters of sanitation; all matters of inspection of buildings; all matters of condemnation of unsafe structures, plumbing, sewers, dairies, milk, fish, and morgues; all matters of the collection and disposition of rubbish and garbage; and to provide exemptions for homeless facilities and any other program for the homeless authorized by chapter 201G, for all matters under this paragraph; and to appoint county physicians and sanitary and other inspectors as necessary to carry into effect ordinances made under this paragraph, who shall have the same power as given by law to agents of the department of health, subject only to limitations placed on them by the terms and conditions of their appointments; and to fix a penalty for the violation of any ordinance, which penalty may be a misdemeanor, petty misdemeanor, or violation as defined by general law[-];
- (15) Each county shall have the power to provide public pounds, to regulate the impounding of stray animals and fowl, and their disposition, and to provide for the appointment, powers, duties, and fees of animal control officers[-];
- (16) Each county shall have the power to purchase and otherwise acquire, lease, and hold real and personal property within the defined boundaries of the county and to dispose of the real and personal property as the interests of the inhabitants of the county may require, except that: any property held for school purposes may not be disposed of without the consent of the superintendent of education; no property bordering the ocean shall be sold or otherwise disposed of; and all proceeds from the sale of park lands shall be expended only for the acquisition of property for park or recreational purposes[-];
- (17) Each county shall have the power to provide by charter for the prosecution of all offenses and to prosecute for offenses against the laws of the State under the authority of the attorney general of the State[-];
- (18) Each county shall have the power to make appropriations in amounts deemed appropriate from any moneys in the treasury, for the purpose of community promotion and public celebrations, the entertainment of distinguished persons as may from time to time visit the county, for the entertainment of other distinguished persons as well as public officials when deemed to be in the best interest of the community, and the rendering of civic tribute to individuals who, by virtue of their accomplishments and community service, merit civic commendations, recognition, or remembrance[-];
- (19) Each county shall have the power to:
  - (A) Construct, purchase, take on lease, lease, sublease, or in any other manner acquire, manage, maintain, or dispose of buildings for county purposes, sewers, sewer systems, pumping stations, waterworks, including reservoirs, wells, pipelines, and other conduits for distributing water to the public, lighting plants, and apparatus and appliances for lighting streets and public buildings and manage, regulate, and control the same;



- (B) Regulate and control the location and quality of all appliances necessary to the furnishing of water, heat, light, power, telephonic, and telegraphic service to the county;
  - (C) Acquire, regulate, and control any and all appliances for the sprinkling and cleaning of the streets and the public ways and for flushing the sewers; and
  - (D) Open, close, construct, or maintain county highways or charge toll on county highways; provided that all revenues received from a toll charge shall be used for the construction or maintenance of county highways[-];
- (20) Each county shall have the power to regulate the renting, subletting, and rental conditions of property for places of abode by ordinance[-];
  - (21) Unless otherwise provided by law, each county shall have the power to establish by ordinance the order of succession of county officials in the event of a military or civil disaster[-];
  - (22) Each county shall have the power to sue and be sued in its corporate name[-];
  - (23) Each county shall have the power to establish and maintain waterworks and sewer works; to collect rates for water supplied to consumers and for the use of sewers; to install water meters whenever deemed expedient; provided that owners of premises having vested water rights under existing laws appurtenant to the premises shall not be charged for the installation or use of the water meters on the premises; to take over from the State existing waterworks systems, including water rights, pipelines, and other appurtenances belonging thereto, and sewer systems, and to enlarge, develop, and improve the same[-];
- (24) (A) Each county may impose civil fines, in addition to criminal penalties, for any violation of county ordinances or rules after reasonable notice and requests to correct or cease the violation have been made upon the violator. Any administratively imposed civil fine shall not be collected until after an opportunity for a hearing under chapter 91. Any appeal shall be filed within thirty days from the date of the final written decision. These proceedings shall not be a prerequisite for any civil fine or injunctive relief ordered by the circuit court[-];
  - (B) Each county by ordinance may provide for the addition of any unpaid civil fines, ordered by any court of competent jurisdiction, to any taxes, fees, or charges, with the exception of fees or charges for water for residential use and sewer charges collected by the county. Each county by ordinance may also provide for the addition of any unpaid administratively imposed civil fines, which remain due after all judicial review rights under section 91-14 are exhausted, to any taxes, fees, or charges, with the exception of water for residential use and sewer charges, collected by the county. The ordinance shall specify the administrative procedures for the addition of the unpaid civil fines to the eligible taxes, fees, or charges and may require hearings or other proceedings. After addition of the unpaid civil fines to the taxes, fees, or charges, the unpaid civil fines shall not become a part of any taxes, fees, or charges. The county by ordinance may condition the issuance or renewal of a license, approval, or permit for which a fee or charge is assessed, except for water for residential use and sewer charges, on payment of the unpaid civil fines. Upon recordation of a notice of unpaid civil fines in the bureau of conveyances, the amount of

the civil fines, including any increase in the amount of the fine which the county may assess, shall constitute a lien upon all real property or rights to real property belonging to any person liable for the unpaid civil fines. The lien in favor of the county shall be subordinate to any lien in favor of any person recorded or registered prior to the recordation of the notice of unpaid civil fines and senior to any lien recorded or registered after the recordation of the notice. The lien shall continue until the unpaid civil fines are paid in full or until a certificate of release or partial release of the lien, prepared by the county at the owner's expense, is recorded. The notice of unpaid civil fines shall state the amount of the fine as of the date of the notice and maximum permissible daily increase of the fine. The county shall not be required to include a social security number, state general excise taxpayer identification number, or federal employer identification number on the notice. Recordation of the notice in the bureau of conveyances shall be deemed, at such time, for all purposes and without any further action, to procure a lien on land registered in land court under chapter 501. After the unpaid civil fines are added to the taxes, fees, or charges as specified by county ordinance, the unpaid civil fines shall be deemed immediately due, owing and delinquent and may be collected [in the same manner as the taxes, fees, or charges.] in any lawful manner. The procedure for collection of unpaid civil fines authorized in this paragraph shall be in addition to any other procedures for collection available to the State and county by law or rules of the courts[-];

- (C) Each county may impose civil fines upon any person who places graffiti on any real or personal property owned, managed, or maintained by the county. The fine may be up to \$1,000 or may be equal to the actual cost of having the damaged property repaired or replaced. The parent or guardian having custody of a minor who places graffiti on any real or personal property owned, managed, or maintained by the county shall be jointly and severally liable with the minor for any civil fines imposed hereunder. Any such fine may be administratively imposed after an opportunity for a hearing under chapter 91, but such a proceeding shall not be a prerequisite for any civil fine ordered by any court. As used in this subparagraph, "graffiti" means any unauthorized drawing, inscription, figure, or mark of any type intentionally created by paint, ink, chalk, dye, or similar substances[-];
- (D) At the completion of an appeal in which the county's enforcement action is affirmed and upon correction of the violation if requested by the violator, the case will be reviewed by the county agency that imposed the civil fines to determine the appropriateness of the amount of the civil fines that accrued while the appeal proceedings were pending. In its review of the amount of the accrued fines, the county agency may consider the following: nature and egregiousness of the violation, duration of the violation, number of recurring and other similar violations, effort taken by the violator to correct the violation, degree of involvement in causing or continuing the violation, reasons for any delay in the completion of the appeal, and other extenuating circumstances. The civil fine which is imposed by administrative order after this review is completed and the violation is corrected is

- subject to only judicial review, notwithstanding any provisions for administrative review in county charters[-];
- (E) After completion of a review of the amount of accrued civil fine by the county agency which imposed the fine, the amount of the civil fine determined appropriate, including both the initial civil fine and any accrued daily civil fine, shall immediately become due and collectible following reasonable notice to the violator. If no review of the accrued civil fine is requested, the amount of the civil fine, not to exceed the total accrual of civil fine prior to correcting the violation, shall immediately become due and collectible following reasonable notice to the violator, at the completion of all appeal proceedings[-];
- (F) If no county agency exists to conduct appeal proceedings for a particular civil fine action taken by the county, then one shall be established by ordinance before the county shall impose that civil fine[-];
- (25) Any law to the contrary notwithstanding, any county mayor may exempt by executive order donors, provider agencies, homeless facilities, and any other program for the homeless under chapter 201G from real property taxes, water and sewer development fees, rates collected for water supplied to consumers and for use of sewers, and any other county taxes, charges, or fees; provided that any county may enact ordinances to regulate and grant the exemptions granted by this paragraph[-];
- (26) Any county may establish a captive insurance company pursuant to article 19, chapter 431[-]; and
- (27) Each county shall have the power to enact and enforce ordinances regulating towing operations.’’

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 27, 2005.)

## ACT 164

S.B. NO. 1903

A Bill for an Act Relating to the Seawater Air Conditioning.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that support for the development of renewable energy systems and efficient energy systems is in the State's best interest.

Seawater air conditioning is a renewable energy technology that has the potential to make a very significant contribution toward the achievement of Hawaiian Electric Company's integrated resources planning objectives and the State's renewable portfolio standard requirements within the next five years.

The legislature further finds that exemption of seawater air conditioning district cooling systems from the public utilities commission is justified because, unlike a public utility, the seawater cooling system will not be provided by a sole

operator providing an essential service for the public health, safety, and welfare. Rather, operators are likely to be a limited number of sophisticated building owners and operators doing business under long-term contracts that protect the rights of all parties.

The purpose of this Act is to exempt seawater air conditioning district cooling systems from public utilities commission regulation.

SECTION 2. Section 269-1, Hawaii Revised Statutes, is amended by amending the definition of “public utility” to read as follows:

““Public utility” ~~includes~~:

- (1) Includes every person who may own, control, operate, or manage as owner, lessee, trustee, receiver, or otherwise, whether under a franchise, charter, license, articles of association, or otherwise, any plant or equipment, or any part thereof, directly or indirectly for public use, for the transportation of passengers or freight, or the conveyance or transmission of telecommunications messages, or the furnishing of facilities for the transmission of intelligence by electricity by land or water or air within the State, or between points within the State, or for the production, conveyance, transmission, delivery, or furnishing of light, power, heat, cold, water, gas, or oil, or for the storage or warehousing of goods, or the disposal of sewage; provided that the term~~[-]~~ shall include:
  - ~~[(1) Shall include any]~~
    - (A) Any person insofar as that person owns or operates a private sewer company or sewer facility; and
  - ~~[(2) Shall include]~~
    - (B) Any telecommunications carrier or telecommunications common carrier;
  - ~~[(3)]~~ (2) Shall not include ~~[any]~~:
    - (A) Any person insofar as that person owns or operates an aerial transportation enterprise;
  - ~~[(4) Shall not include persons]~~
    - (B) Persons owning or operating taxicabs, as defined in this section;
  - ~~[(5) Shall not include common]~~
    - (C) Common carriers transporting only freight on the public highways, unless operating within localities or along routes or between points that the public utilities commission finds to be inadequately serviced without regulation under this chapter;
  - ~~[(6) Shall not include persons]~~
    - (D) Persons engaged in the business of warehousing or storage unless the commission finds that regulation thereof is necessary in the public interest;
  - ~~[(7) Shall not include:~~
    - ~~(A)]~~ (E) The business of any carrier by water to the extent that the carrier enters into private contracts for towage, salvage, hauling, or carriage between points within the State and the carriage is not pursuant to either an established schedule or an undertaking to perform carriage services on behalf of the public generally; ~~[and~~
    - ~~(B)]~~ (F) The business of any carrier by water, substantially engaged in interstate or foreign commerce, transporting passengers on luxury cruises between points within the State or on luxury round-trip cruises returning to the point of departure;
  - ~~[(8) Shall not include any]~~
    - (G) Any person who:

- ~~[(A)]~~ (i) Controls, operates, or manages plants or facilities for the production, transmission, or furnishing of power primarily or entirely from nonfossil fuel sources; and
- ~~[(B)]~~ (ii) Provides, sells, or transmits all of that power, except such power as is used in its own internal operations, directly to a public utility for transmission to the public;
- ~~[(9) Shall not include a]~~
- (H) A telecommunications provider only to the extent determined by the commission pursuant to section 269-16.9;
- ~~[(10) Shall not include any]~~
- (I) Any person who controls, operates, or manages plants or facilities developed pursuant to chapter 167 for conveying, distributing, and transmitting water for irrigation and such other purposes that shall be held for public use and purpose; ~~and~~
- ~~[(11) Shall not include any]~~
- (J) Any person who owns, controls, operates, or manages plants or facilities for the reclamation of wastewater; provided that:
- ~~[(A)]~~ (i) The services of the facility shall be provided pursuant to a service contract between the person and a state or county agency and at least ten per cent of the wastewater processed is used directly by the State or county which has entered into the service contract;
- ~~[(B)]~~ (ii) The primary function of the facility shall be the processing of secondary treated wastewater that has been produced by a municipal wastewater treatment facility that is owned by a state or county agency;
- ~~[(C)]~~ (iii) The facility shall not make sales of water to residential customers;
- ~~[(D)]~~ (iv) The facility may distribute and sell recycled or reclaimed water to entities not covered by a state or county service contract; provided that, in the absence of regulatory oversight and direct competition, the distribution and sale of recycled or reclaimed water shall be voluntary and its pricing fair and reasonable. For purposes of this ~~[(i)]~~ subparagraph, "recycled water" and "reclaimed water" mean treated wastewater that by design is intended or used for a beneficial purpose; and
- ~~[(E)]~~ (v) The facility shall not be engaged, either directly or indirectly, in the processing of food wastes~~[-]; and~~
- (K) Any person who owns, controls, operates, or manages any seawater air conditioning district cooling project; provided that at least fifty per cent of the energy required for the seawater air conditioning district cooling system is provided by a renewable energy resource, such as cold, deep seawater.

~~[In the event]~~ If the application of this chapter is ordered by the commission in any case provided in paragraphs ~~[(5); (6); (9); and (10);]~~ (2)(C), (2)(D), (2)(H), and (2)(I), the business of any public utility that presents evidence of bona fide operation on the date of the commencement of the proceedings resulting in the order shall be presumed to be necessary to public convenience and necessity, but any certificate issued under this proviso shall nevertheless be subject to such terms and conditions as the commission may prescribe, as provided in sections 269-16.9 and 269-20."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 27, 2005.)

**ACT 165**

H.B. NO. 140

A Bill for an Act Relating to Human Services.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that Hawaii, like other states, now receives limited federal temporary assistance for needy families (TANF) moneys to replace the previously open-ended categorical need system of welfare. However, administrative decisions and actions are required to optimize the use of these funds.

For example, to maintain maximum flexibility, states must obligate TANF funds in the federal fiscal year they are received. However, if a state has an unobligated balance after October 1, it must spend the money on ongoing assistance such as cash, food, and housing. States obligating or transferring funds also may transfer up to thirty per cent of TANF funds to the child care development block grant, the access to jobs program, and the social services block grant. The maximum amount that may be transferred to the social services block grant is ten per cent.

TANF funding is a result of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. States may need to set eligibility levels depending on which purpose the funds are to be used. For example, the four purposes of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 are:

- (1) To provide assistance to needy families;
- (2) To end dependence on welfare by promoting job preparation, work, and marriage for needy families;
- (3) To prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
- (4) To encourage the formation and maintenance of two-parent families.

A state wishing to address either or both of the first two objectives must set eligibility levels for as many different programs as it creates. Eligibility need not be the same for each program, nor does it need to have a direct correlation with TANF eligibility. However, if a state's priorities are to address either or both of the last two objectives, a state need not set any eligibility levels, but may use TANF funds to serve expanded populations without regard to income. Target populations could include teens, custodial parents, noncustodial parents, ex-welfare recipients, those who have transitioned off welfare, and those who have never been on welfare.

The legislature also finds that states need to carefully distinguish between providing "assistance" and "not assistance" under TANF regulations. If a state uses TANF moneys for payments to meet ongoing basic needs such as cash, food, or housing, the payments are considered "assistance" and federal requirements apply. These requirements include work participation rate requirements, time limits, child support assignment, and data collection. However, if TANF moneys are used to pay for other services such as education, short-term assistance (non-recurring assistance of less than four months), and work subsidies, these payments are considered "not assistance" and are thus not subject to these federal requirements. This allows states to provide services to families not receiving cash support under the program.

States are also required to take certain actions under the rubric "maintenance of effort" to continue receiving TANF moneys. This entails making further decisions, such as whether to commingle state funds with TANF moneys. If com-

mingled, state funds are subject to TANF rules. If segregated, funds are subject to TANF requirements, except time limits. Separate state programs using maintenance of effort dollars are not subject to federal time limits, work participation rates, child support assignment, or data collection requirements. If a state has a separate state program and wants to be eligible for a high performance bonus, receive work participation caseload reduction credit, or receive penalty relief, the state must collect data. A state can also use maintenance of effort moneys to fund medical assistance, including medication, health insurance, and medical treatment. However, if a state spends maintenance of effort funds in an existing program, it will be subject to a new spending test where the state can only count the amount it spends above what it spent in 1995 towards its maintenance of effort requirement. Furthermore, all maintenance of effort spending must coincide with TANF eligibility.

States also need to check work participation requirements. As caseloads have declined, states received a caseload reduction credit, reducing the number of individuals a state needs to claim to meet work participation rates. This also means that a state needs to know it can spend seventy-five per cent, rather than eighty per cent of maintenance of effort moneys.

States are also required to report quarterly on the amount of money they spend. The legislature finds that these reports need to be carefully scrutinized to ensure that appropriated moneys do not go unspent. If a state fails to obligate money by October 1 of each year, the state loses flexibility. Thus, the legislature finds that the following are necessary:

- (1) Public input over implementation of use of TANF funds;
- (2) Conducting hearings to receive public input; and
- (3) Performing evaluations of TANF program spending.

Evaluations can provide the legislature with specific and accurate details concerning how welfare reform is working. It also affords a critical opportunity for mid-course correction by identifying unintended consequences, newly identified needs, and areas for expansion and innovation.

The purpose of this Act is to provide a mechanism for public comment regarding the expenditure of TANF funds and implementation of TANF programs.

SECTION 2. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§346- Temporary assistance for needy families; funding and programs; public comment.** (a) The department, to the extent allowed under section 346-10, shall make all data relating to temporary assistance for needy families funds available to the senate and house of representatives committees having primary jurisdiction over fiscal, health, and human services issues, upon request. The committees shall jointly evaluate the implementation of the state temporary assistance for needy family program and program expenditures and make annual recommendations for appropriations.

(b) The legislature may conduct hearings to receive public comment relating to the implementation of the state temporary assistance for needy families program and the optimal expenditure of program funds. The legislature shall determine the number and timing of hearings to be held; provided that if hearings are held, no fewer than one hearing on each island of the State shall be held annually; provided further that the senate and house of representatives committees having primary jurisdiction over fiscal, health, and human services matters shall jointly conduct the public hearings.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved June 27, 2005.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 166**

S.B. NO. 1038

A Bill for an Act Relating to the Hawaii Procurement Institute.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that government procurement is becoming a distinct field of procedures, laws, regulations, and processes. Government procurement in Hawaii is a powerful economic force in view of the relatively small scale of Hawaii business. The William S. Richardson School of Law at the University of Hawaii is particularly well-equipped and capable to furnish the expertise needed in procurement to ensure that government procurement functions are fair, just, equitable, and efficient. In this manner, businesses of all sizes in this State can benefit from procuring government contracts.

The purpose of this Act is to remove the state procurement institute from the oversight of the state procurement office and establish the institute at the University of Hawaii's William S. Richardson School of Law. The legislature finds that the establishment of a procurement institute under the University of Hawaii is a matter of statewide concern, and does not constitute an intrusion into the exclusive jurisdiction of the board of regents of the University of Hawaii.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new section to be appropriately designated and to read as follows:

**“§ - Procurement institute; established.** There is established the procurement institute at the William S. Richardson School of Law, University of Hawaii, to be under the direction of a director who shall be appointed by the dean of the school of law, with the approval of the board of regents. Subject to the availability of funds, faculty, and facilities, the institute shall offer such courses of study as may be deemed appropriate and authorized by the board of regents. The institute shall cooperate with other public and private entities and persons to promote and develop a professional acquisition workforce and to improve and enhance the State's contractor industrial base through education and training. The procurement institute may:

- (1) Conduct and participate in procurement education and training for entry-level and higher-qualified state employees and others, including persons not employed by the State;
- (2) Conduct and promote research, conferences, and studies to improve the procurement process, laws, policies, methods, rules, procedures, and forms relating to state and local government procurement;
- (3) Report on and make recommendations regarding goals, guidelines, innovations, and evaluation of state and local government procurement initiatives; and
- (4) Establish and maintain a procurement library within the State.”

SECTION 3. Section 103D-206, Hawaii Revised Statutes, is amended to read as follows:



**“§103D-206 Additional duties of the administrator of the procurement office.** In addition to the duties referred to in section 103D-205, the administrator shall:

- (1) Perform periodic review of the procurement practices of all governmental bodies;
- (2) Assist, advise, and guide governmental bodies in matters relating to procurement;
- (3) Develop and administer a statewide procurement orientation and training program;
- (4) Develop, distribute, and maintain a procurement manual for all state procurement officials; and
- (5) Develop, distribute, and maintain a procurement guide for vendors wishing to do business with the State and its counties; and
- (6) ~~Establish and maintain a procurement institute, in cooperation with the University of Hawaii William S. Richardson school of law and other public and private entities and/or persons, to promote and develop a professional acquisition workforce and to improve and enhance the State's contractor industrial base through education and training. The procurement institute may:~~
  - ~~(A) Conduct and participate in procurement education and training for entry level and higher qualified state employees and others, including persons not employed by the State;~~
  - ~~(B) Conduct and promote research, conferences, and studies to improve the procurement process, laws, policies, methods, regulations, procedures, and forms relating to state and local government procurement;~~
  - ~~(C) Report on and make recommendations regarding goals, guidelines, innovations, and evaluation of state and local government procurement initiatives; and~~
  - ~~(D) Establish and maintain a procurement library within the State].”~~

SECTION 4. All rights, powers, functions, and duties of the state procurement office regarding the procurement institute are transferred to the William S. Richardson School of Law, University of Hawaii.

All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

No officer or employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act, and such officer or employee may be transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed; and provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

An officer or employee of the State who does not have tenure and who may be transferred or appointed to a civil service position as a consequence of this Act shall become a civil service employee without the loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges and without the necessity of examination; provided that such officer or employee possesses the minimum qualifications for the position to which transferred or appointed.

If an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the

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officer or employee is eligible under the personnel laws of the State as determined by the head of the department or the governor.

SECTION 5. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the state procurement office relating to the functions transferred to the University of Hawaii shall be transferred with the functions to which they relate.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect upon its approval.

(Approved June 28, 2005.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 167

S.B. NO. 460

A Bill for an Act Relating to Tax Refunds.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 232, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§232- Appeals relating to claims for refund.** (a) The denial in whole or in part by the department of taxation of a tax refund claim may be appealed by the filing of a written notice of appeal to a board of review or the tax appeal court within thirty days after notice of the denial of the claim.

(b) An appeal may be filed with a board of review or the tax appeal court for review of the merits of a tax refund claim, upon a notice of appeal filed at any time after one hundred eighty days from the date that the claim was filed; provided that the department has not given notice of a denial of the claim within that period.

(c) Notwithstanding any law to the contrary under title 14, this section shall apply to tax refund claims for all taxes administered by the department of taxation. The procedures for appeals from tax assessors, a board of review, and the tax appeal court provided under this chapter and under section 235-114 shall apply to appeals relating to tax refund claims under this section. Any claimed tax refund or credit appealed pursuant to this section shall be awarded only if the claim therefor was filed within the applicable statutory period of limitation.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This section shall take effect upon its approval, and shall apply to tax refund claims filed after June 30, 2005.

(Approved June 28, 2005.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 168

A Bill for an Act Relating to Human Services.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Developmental disabilities residential service providers provide important residential care services, a type of human service, for individuals with developmental disabilities or mental retardation. Presently, the providers of these services are not being adequately reimbursed by the State for the high quality residential services they provide to these individuals. As a result, a number of developmental disabilities domiciliary homes are forced to close due to a lack of adequate funding. This is a significant concern to the State, given that many of these people would have been cared for by the State at Waimano training school and hospital, prior to its closing in June 1999.

The purpose of this Act is to ensure that developmental disabilities residential service providers are adequately reimbursed for the residential services they provide.

SECTION 2. Section 321-15.9, Hawaii Revised Statutes, is amended to read as follows:

~~“[§321-15.9] Developmental disabilities [domiciliary homes] residential services. (a) The department of health is authorized to license developmental disabilities domiciliary homes for individuals with developmental disabilities or mental retardation who are unable to live independently and who require supervision or care, but do not require care by licensed nurses in a domiciliary setting[-]; provided that nothing in this section shall exclude the department of human services from licensing, certifying, regulating, or entering into contracts for child foster homes or providers that serve persons with developmental disabilities or mental retardation.~~

~~(b) For the purposes of this section[; <sup>1</sup>“developmental disabilities”];~~

~~“Developmental disabilities” shall be as defined under section 333E-2[; and “mental retardation” shall be as defined under section 333F-1].~~

~~“Developmental disabilities apartment complex” means an apartment building composed of five or more separate apartment units in which every apartment unit, except for one apartment unit occupied by the operator or staff for the complex, is dedicated to providing residences for individuals with developmental disabilities or mental retardation who do not require twenty-four hour supervision or care.~~

~~“Developmental disabilities domiciliary home” means a residence for not more than five persons with developmental disabilities or mental retardation that require twenty-four hour supervision or care, but do not require care by licensed nurses in a domiciliary setting.~~

~~“Mental retardation” shall be as defined under section 333F-1.~~

~~(c) The director shall adopt rules regarding developmental disabilities domiciliary homes in accordance with chapter 91 [which] that shall be designed to:~~

- ~~(1) Establish criteria for licensure of homes, including inspections, registration, fees, qualifications of operators and staff, and other factors necessary to ensure [the] safe and appropriate operation of each home;~~
- ~~(2) Protect the health, safety, and civil rights of persons residing in the homes;~~
- ~~(3) Provide for plans of care [which] that include community integration and [training] support of persons residing in the licensed homes;~~

- (4) Provide for the licensure of homes of up to five persons ~~[who are developmentally disabled or mentally retarded]~~ with developmental disabilities or mental retardation, and who are not related to the home operator or facility staff;
- (5) Establish penalties for the failure to comply with any rule; and
- (6) Establish criteria for training of operators and staff of any ~~[facility]~~ developmental disabilities domiciliary home licensed under this section.

(d) Rules adopted under this section shall be enforced by the director.

(e) No single apartment in a developmental disabilities apartment complex funded under this section shall be occupied by more than two residents with developmental disabilities or mental retardation.

(f) The director shall establish criteria for contracts for developmental disabilities apartment complexes and where necessary to provide for additional funding for developmental disabilities domiciliary homes.

~~[(e)]~~ (g) The department shall maintain a registry of all [facilities] developmental disabilities domiciliary homes licensed under this section and a current inventory of vacancies [to facilitate the placement of individuals in these facilities].<sup>2</sup>

~~[(f) The rate of payment for residents in the developmental disabilities domiciliary homes shall be determined on the same basis as domiciliary care homes as provided under section 346-53.]~~

(h) The department of health may enter into contracts for additional payments for residential services to the providers of developmental disabilities domiciliary homes and payments to operators of developmental disabilities apartment complexes for residential services on terms determined by the department of health.”

SECTION 3. Section 346-53, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The director, pursuant to chapter 91, shall determine the rate of payment for domiciliary care provided to recipients eligible either for Federal Supplementary Security Income, or public assistance in accordance with state standards, or both. The director shall provide for level of care payment as follows:

- (1) For those adult residential care homes classified as facility type I, licensed developmental disabilities domiciliary homes as defined under section 321-15.9, and adult foster homes as defined under section 321-11.2, the state supplemental payment shall not exceed \$521.90; and
- (2) For those adult residential care homes classified as facility type II, the state supplemental payment shall not exceed \$629.90.

If the operator does not provide the quality of care consistent with the needs of the individual to the satisfaction of the department, the department may remove the recipient to another facility.

The department shall handle abusive practices under this section in accordance with chapter 91.

Nothing in this subsection allows the director to remove a recipient from an adult residential care home or other similar institution if the recipient does not desire to be removed and the operator is agreeable to the recipient remaining, except where the recipient requires a higher level of care than provided, or where the recipient no longer requires any domiciliary care.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2005.

(Approved June 28, 2005.)

**Notes**

1. Comma in HRS.
2. Period should be underscored.

**ACT 169**

S.B. NO. 527

A Bill for an Act Relating to Purchases of Health and Human Services.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 103F-101, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) as follows:

“(a) This chapter shall apply to all contracts made by state agencies and may be used by county agencies to provide health or human services to Hawaii’s residents<sup>[,];</sup> provided that this chapter shall not apply to:

- (1) Contracts to award grants or subsidies of state funds appropriated by the legislature to a specific organization or individual;
- (2) Transactions between or among government agencies, including but not limited to agreements, contracts, and grants;
- (3) Transactions expressly exempt from the requirements of this chapter; and
- (4) Transactions that the chief procurement officer determines are exempt under rules adopted by the policy board.”

2. By amending subsection (c) to read:

“(c) Nothing in this chapter or rules adopted hereunder shall prevent any state or county agency from complying with the terms or conditions of any grant, bequest, or cooperative agreement, or from satisfying any requirement of federal statute or regulation to avoid the loss or reduction of federal assistance.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 29, 2005.)

**ACT 170**

H.B. NO. 295

A Bill for an Act Relating to Professional and Vocational Licensing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act shall be known as the “Deployed Military Personnel License Extension Act.”

SECTION 2. Chapter 436B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§436B- Extension of licenses for members of the armed forces, national guard, and reserves.** (a) Notwithstanding any other law to the contrary, any license held by a member of the armed forces, national guard, or a reserve component that expires, is forfeited, or deemed delinquent while the member is on active duty and deployed during a state or national crisis shall be restored under the restoration requirements provided in this section.

For the purposes of this section, “state or national crisis” includes but is not limited to:

- (1) A situation requiring the proper defense of nation or state;
  - (2) A federal or state disaster or emergency;
  - (3) A terrorist threat; or
  - (4) A homeland security or homeland defense event or action.
- (b) The licensing authority shall restore a license upon the payment of the current renewal fee if the member:
- (1) Requests a restoration of the license within one hundred twenty days after being discharged or released from active duty deployment;
  - (2) Provides the licensing authority with a copy of the member’s order calling the member to active duty deployment and the member’s discharge or release orders; and
  - (3) If required for renewal, provides documentation to establish the financial integrity of the licensee or to satisfy a federal requirement.
- (c) This section:
- (1) Shall not apply to a member who is on scheduled annual or specialized training, or to any person whose license is suspended or revoked, or who otherwise has been adjudicated and is subject to disciplinary action on a license; and
  - (2) Shall also apply to a member whose license is current, but will expire within one hundred twenty days of the member’s discharge or release from active duty deployment.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect on July 1, 2005.

(Approved June 29, 2005.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 171**

H.B. NO. 115

A Bill for an Act Relating to Military Affairs.

*Be It Enacted by the Legislature of the State of Hawaii:*

**PART I**

SECTION 1. The purpose of this Act is to recognize and honor the members of the armed forces by assisting them as follows:

- (1) Providing an appropriation for casket liners and to address the soil problems at the Hawaii state veterans cemetery; and
- (2) Authorizing the right of returning members of the military to retain readmission to programs of the University of Hawaii system; and

- (3) Allowing enlisted personnel of the army or air national guard who receive a uniform maintenance allowance from the state department of defense to designate a financial institution account into which to deposit the member's uniform maintenance allowance.

## PART II

SECTION 2. The legislature finds that the Hawaii state veterans cemetery in Kaneohe opened in 1991 as the National Memorial Cemetery of the Pacific was reaching full capacity. The Kaneohe cemetery is Hawaii's only state-run facility that serves veterans and their family members. The cemetery is a place of peace and tranquility where comrades-in-arms and friends can visit the final resting place of departed veterans.

Unfortunately, this peace and tranquility has been disturbed by soil problems in the area. A recent study has found that the cemetery's soil is not suitable for re-use as back-fill in graves due to its composition and moisture content. Consequently, the substandard soil cannot provide the necessary support for graves and headstones, causing them to sink in unsightly holes that mar the landscape and desecrate the sanctity of the cemetery. To remedy the soil problem, appropriate soil and casket liners are necessary.

The purpose of this part is to provide funds to remedy the soil problem and for the purchase of casket liners at the Hawaii state veterans cemetery to ultimately provide a decent burial site for Hawaii's veterans.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$131,200 or so much thereof as may be necessary for fiscal year 2005-2006 and \$56,250 or so much thereof as may be necessary for fiscal year 2006-2007 to address the soil problems at the Hawaii state veterans cemetery; provided that a portion of the appropriated amount for fiscal year 2005-2006 shall be used for casket liners.

The sums appropriated in this part shall be expended by the department of defense for the purposes of this Act.

## PART III

SECTION 4. The University of Hawaii shall establish a program to allow returning military personnel the right to retain admission to programs to which they had been admitted prior to deployment, including students who had been admitted but did not enroll due to the timing of their deployment; provided that the individual is returning from a tour of duty and identifies the individual's prior acceptance to the appropriate campus registrar.

## PART IV

SECTION 5. Chapter 121, Hawaii Revised Statutes, is amended by added a new section to be appropriately designated and to read as follows:

**“§121- Uniform maintenance allowance; deposit.** Enlisted personnel of the army or air national guard who receive a uniform maintenance allowance from the state department of defense, regardless of the source of the funds, may designate a financial institution account into which the department of accounting and general services is authorized to deposit the member's uniform maintenance allowance.”

## PART V

SECTION 6. New statutory material is underscored.<sup>1</sup>

## ACT 172

SECTION 7. This Act shall take effect upon its approval; provided that part II shall take effect on July 1, 2005.

(Approved June 29, 2005.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 172

H.B. NO. 1029

A Bill for an Act Making an Appropriation for the Department of Defense.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that there is no reliable and effective method of communicating important information to Hawaii's military veterans and their families. This prevents veterans from all branches of the military from being informed of important outreach services, upcoming veteran-related events in the community, and the dates of various military ceremonies.

Presently, the office of veterans' services of the department of defense lacks sufficient funds to publish a newsletter that would disseminate this important information to military veterans and their families.

The purpose of this Act is to appropriate moneys to enable the office of veterans' services to publish the Hawaii veterans' newsletter and update the veterans' database.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$30,000, or so much thereof as may be necessary for fiscal year 2005-2006, to publish the Hawaii veterans' newsletter and update the office of veterans' services database.

The sum appropriated shall be expended by the department of defense for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2005.

(Approved June 29, 2005.)

## ACT 173

S.B. NO. 1702

A Bill for an Act Relating to High Technology.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 206M, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

### **“PART . HIGH TECHNOLOGY INNOVATION CORPORATION**

**§206M-A Establishment of the high technology innovation corporation;**  
**purpose.** (a) There is established, as a body corporate, the high technology innovation corporation. The high technology innovation corporation shall be a public, not-for-profit organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended. The high technology innovation corporation shall be attached to the department of business, economic development, and tourism for administrative purposes.



(b) The purpose of the high technology innovation corporation shall include, but not be limited to, the facilitation of the growth and development of the commercial high technology industry in Hawaii. Its duties shall include, but not be limited to:

- (1) Managing the assets and resources of the high technology development corporation, including its technology parks and incubation facilities;
- (2) Planning, creating, and implementing any programs and projects of the high technology development corporation that shall be assigned to the high technology innovation corporation, including federally- and state-funded programs and projects and those programs funded by other nonprofit and for-profit organizations;
- (3) Identifying and obtaining funding and other resources in support of the purposes of the high technology innovation corporation and the high technology development corporation from agencies and organizations not able to provide resources directly to the high technology development corporation;
- (4) Assisting the high technology development corporation in the promotion and marketing of Hawaii as a location for commercial high technology activity; and
- (5) Assisting the high technology development corporation in any other strategic or operational manner that supports the state's technology-based economic development activities.

(c) The high technology innovation corporation shall implement this purpose by:

- (1) Furnishing the means, methods, and agencies by which the management, programming, training, investigation, research, and analysis may be conducted;
- (2) Other means to make the benefits of programming, training, investigation, research, and analysis available to the public; and
- (3) Any and all other acts reasonably designed to promote the foregoing purposes in the interest of promoting the general welfare of the people of the State.

The high technology innovation corporation shall have the sole right to provide the foregoing services and support to the high technology development corporation, and the high technology development corporation shall use the high technology innovation corporation to provide these services and support in every case, except when the high technology development corporation determines that the high technology innovation corporation may not or cannot legally or operationally provide these services and support.

**§206M-B Board of directors; composition.** (a) The affairs of the high technology innovation corporation shall be under the general management and control of a board of directors consisting of nine members. Four members of the board of directors of the high technology development corporation shall be ex officio, voting members of the high technology innovation corporation's board and shall be selected by the high technology development corporation's board of directors for terms to be determined by the high technology development corporation's board. The executive director and chief executive officer of the high technology development corporation shall serve as an ex officio, nonvoting member of the high technology innovation corporation board. The remaining four members shall be appointed by the governor from lists of nominees provided by the president of the senate and the speaker of the house of representatives. The governor shall appoint two persons from the list submitted by the president of the senate and two persons from the list submitted by the speaker of the house of representatives. The lists of

nominees provided by the president of the senate and the speaker of the house of representatives shall consist of members of the general public selected on the basis of their knowledge, interest, and proven expertise in, but not limited to, one or more of the following fields: finance, commerce and trade, corporate management, marketing, economics, engineering, information technology and telecommunications, life sciences, and other high technology fields. All the members appointed from the general public shall serve for a term of four years, except that half of those initially appointed from the public may have reduced terms in accordance with section 26-34, so as to provide, as nearly as can be, for the expiration of an equal number of terms at intervals of one year, with each term commencing on July 1 and expiring on June 30.

(b) All members of the high technology innovation corporation's board shall serve without pay, but shall be entitled to reimbursement for necessary expenses, including travel expenses, while attending meetings and while in the discharge of duties and responsibilities.

(c) The members of the high technology innovation corporation's board shall elect the chairperson of the board.

**§206M-C Powers of the board.** The high technology innovation corporation, under the direction of its board of directors, shall have the following general powers:

- (1) To adopt, amend, and repeal bylaws governing the conduct of its business and the exercise of the powers and performance of duties granted to or imposed upon it by law;
- (2) To sell, lease, rent, hold, maintain, use, and operate any property, real, personal, or mixed, tangible or intangible, in accordance with the conditions under which it was received;
- (3) To enter into and perform contracts, leases, cooperative agreements, or other transactions with the high technology development corporation or any other agency or political subdivision of the State, any private person, firm, partnership, association, company, or corporation, only as it may be necessary in the conduct of its business and on terms as it may deem appropriate; provided that the high technology innovation corporation shall not obligate any funds of the State except funds that have been appropriated to it by the legislature or transferred or contracted to it by the high technology development corporation or other agency or department of the state government. Notwithstanding the foregoing, the high technology innovation corporation may enter into and perform contracts, leases, cooperative agreements, or other transactions with any agency or instrumentality of the United States, a foreign nation, a state, a territory or a possession, or with any political subdivision thereof, whenever the donating or granting agency or instrumentality determines that the high technology development corporation or any other agency of the State cannot as effectively and efficiently accomplish the purposes for which the contracts, leases, cooperative agreements, or other transactions are being entered into; provided that the high technology innovation corporation shall not obligate any funds of the State except funds that have been appropriated or transferred to it or contracted for it;
- (4) To receive by gifts, grants, devises, bequests, or otherwise, from private sources only, any property, real, personal, or mixed, intangible or tangible, absolutely or in trust, to be used and disposed of, either the principal or the income therefrom, in accordance with the conditions under which it was received; provided that no gift to the high technology innovation corporation shall be accepted unless approved or confirmed by its board of directors. Notwithstanding the foregoing, the

high technology innovation corporation may receive gifts, grants, or awards from any agency or instrumentality of the United States, a foreign nation, a state, a territory or a possession, or from any political subdivision thereof, whenever the donating or granting agency or instrumentality determines that the high technology development corporation or any other agency of the State cannot as effectively and efficiently accomplish the purposes for which the gifts, grants, or awards are being made; provided that no gift to the high technology innovation corporation shall be accepted unless approved or confirmed by its board of directors;

- (5) To have a corporate seal;
- (6) To sue and be sued in its own name;
- (7) To serve as trustee or beneficiary under terms of any gift, indenture, or will;
- (8) To apply for, take out, receive by purchase or gift, hold, administer, and dispose of copyrights, patent rights, licenses, assignments of inventions, discoveries, processes, and other property, rights or interests therein, and the income thereof, absolutely or subject to conditions or trusts as may be attached thereto or be imposed thereon, and to obligate itself to perform and execute any and all conditions or trusts;
- (9) To conduct programs, projects, research, studies, experiments, investigations, and tests in all fields of knowledge; to promote and develop the scientific and commercial value of inventions, discoveries, and processes; and to make, publish, and distribute the results thereof;
- (10) To coordinate and correlate activities and projects of the high technology innovation corporation with the work of state agencies for the purpose of relating research work to the economic development of the state whenever practical or desirable;
- (11) To stimulate and promote cooperative research projects and activities;
- (12) To establish and maintain, or to assist in establishing and maintaining staff positions for the purpose of aiding in technology-based economic development, and to enter into agreements or contracts with other corporations, organizations, institutions, or persons for this purpose and to pay the necessary and appropriate expenses therefor;
- (13) To prepare, print, or publish any manuscript, research article, report, study, discussion, reference, collection, or any pictorial or schematic representation or group or collection thereof, whether the same belongs to or is the work of any state agency or its employees, or the high technology innovation corporation or its employees or a contractor of the high technology innovation corporation. The printing or publication may be accomplished through whatever person, company, or agency is deemed most appropriate by the board of directors; and
- (14) To do any or all other acts reasonably necessary to carry out the objects and purposes of the high technology innovation corporation.

**§206M-D Innovation corporation; exempted from certain state laws.** To carry out the purposes and objectives of this part, the high technology innovation corporation shall be granted flexibility in hiring its personnel and in handling and disbursing moneys by being exempt from the following state laws in the Hawaii Revised Statutes:

- (1) Sections 36-27 and 36-30, relating to special fund reimbursements to the state general fund;
- (2) Section 78-1, relating to public employment; and
- (3) Chapter 76, relating to civil service.

**§206M-E Officers and employees of the innovation corporation.** The executive director and chief executive officer of the high technology development corporation shall be the president of the high technology innovation corporation. The high technology innovation corporation's board of directors may also appoint other officers and employees as may be necessary in administering the affairs of the high technology innovation corporation. The high technology innovation corporation's board of directors shall set the employees' duties, responsibilities, salaries, holidays, vacations, leaves, hours of work, and working conditions and may grant other benefits as it deems necessary. New employees of the innovation corporation shall not be entitled to any benefits conferred under chapter 76, 78, 88, or 89, or any public employee collective bargaining agreement, executive order, executive directive, or rule; provided that any existing officer or employee of the State whose functions are transferred by this part shall not suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this part.

**§206M-F Annual report.** The high technology innovation corporation shall submit an annual report, not later than twenty days prior to the convening of each regular session, to the governor, president of the senate, and the speaker of the house of representatives. The report shall include but not be limited to the high technology innovation corporation's audited financial statement, total amount of payroll and other disbursements made, and progress and accomplishments made during the year.

**§206M-G Dissolution.** If the high technology innovation corporation is dissolved, all of its property, real, personal, and mixed and wheresoever situated, shall vest immediately and absolutely in the high technology development corporation, and none of its property shall inure to the benefit of any officer, director, or member of the high technology innovation corporation.

**§206M-H Patents, copyrights, and other rights.** Any patents, copyrights, inventions, discoveries, or other rights arising from high technology innovation corporation activities shall belong to the high technology innovation corporation and be subject to policies or rules as the high technology innovation corporation board of directors may adopt.

**§206M-I Contracts with state agencies.** Any contract between the high technology innovation corporation and any agency, office, department, or other administrative subdivision of the executive branch of the State shall include the following:

- (1) Its termination date;
- (2) Its intent and purpose;
- (3) A statement establishing the full permissible extent of its applicability; and
- (4) A description of the circumstances under which it may be amended or extended."

SECTION 2. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 29, 2005.)

## ACT 174

S.B. NO. 1253

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 302A-1124, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department, through the board and its superintendent, shall establish a school community council system under which each public school, excluding new century charter schools and new century conversion charter schools, shall create and maintain a school community council. Each school community council shall:

- (1) Review and evaluate the school’s academic plan and financial plan, and either recommend revisions of the plans to the principal, or recommend the plans for approval by the complex area superintendent;
- (2) Ensure that the school’s academic and financial plans are [aligned] consistent with the educational accountability system under section 302A-1004;
- (3) Participate in principal selection and evaluation, and transmit any such evaluations to the complex area superintendent; and
- (4) Provide collaborative opportunities for input and consultation.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2005.

(Approved June 30, 2005.)

## ACT 175

H.B. NO. 1276

A Bill for an Act Relating to Public Access.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Poamoho trail on Oahu was constructed in 1934 as the result of a collaboration between the territorial forestry division and the United States Army in soliciting Congress for critically needed emergency conservation work funds, which established the Civilian Conservation Corps. During this period, several trails were built in the Koolau mountains of Oahu for the purpose of improving access to remove feral animals and for military defense. Over the ensuing sixty years, the Poamoho trail became one of the premier hiking trails on Oahu and, along with other areas of the Ewa forest reserve, is critical for watershed protection as the trail provides access for hunters to control feral pig populations.

In the early 1990s, the Na Ala Hele trail and access program (Na Ala Hele) of the division of forestry and wildlife, department of land and natural resources (DLNR), initiated an aggressive trail restoration project with significant community involvement, including volunteer assistance from hiking groups, hunters, and Boy Scouts. The restoration project included cutting back encroaching noxious and invasive vegetation, and conducting trail surface repairs and grading along approximately seventy per cent of Poamoho trail. Since that time, Na Ala Hele has attempted to continue with a trail maintenance program on Poamoho for public safety and enjoyment as well as watershed protection and management.

Access to the Ewa forest reserve and the Poamoho trail via an unpaved pineapple road has always been subject to the approval of the private landowner, Dole Foods Hawaii. In 2002, Dole Foods Hawaii installed a gate at the primary entrance to this access. This gate was installed because of increasing property and crop damage, theft, dumping of abandoned vehicles, and unauthorized recreational vehicle use on Dole Foods Hawaii agricultural lands below the public forest reserve. Since the gate's installation, public access has been prohibited.

In the ensuing three years, DLNR has been negotiating with Dole Foods Hawaii to reach an agreement on regulated public hiker and hunter access to the Ewa forest reserve that is equitable for both parties. A significant impediment has been the lack of agreement on language for a memorandum of agreement that allows the State to indemnify Dole Foods Hawaii and its affiliates for loss of property and damage claims resulting from public access.

A DLNR management permit system has been devised that would restrict public use to a specific portion of Dole Foods Hawaii property via a section of the unpaved access road that leads to the Ewa forest reserve boundary. DLNR believes that a permit system would ensure that virtually no property, crop damage, or theft would occur as a result of the permittees traversing Dole Foods Hawaii land to reach the Ewa forest reserve. DLNR would absorb the associated costs of managing and maintaining the unpaved access road to ensure the safety of public vehicles crossing the property. DLNR would also indemnify Dole Foods Hawaii from any claims resulting from permitted and regulated use of this access road.

The legislature finds that public access to the Ewa forest reserve and the Poamoho trail is of vital public importance and is critical for providing public hunting access to control feral ungulates in the Ewa forest reserve.

The purpose of this Act is to allow DLNR to enter into indemnity and defense agreements to protect landowners and persons associated with landowners to further the purposes of chapter 198D, Hawaii Revised Statutes.

SECTION 2. Section 198D-7.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[(§198D-7.5)]~~ **Agreements to defend and indemnify.** (a) The department may enter into agreements with owners of public or private land to further the purposes of this chapter. Agreements between the State and an owner may provide that the State will defend the owner, its affiliates, and their respective heirs, executors, administrators, representatives, successors, trustees, guardians, assigns, lessees, officers, directors, stockholders, employees, agents, and partners, from claims made ~~[against the owner]~~ by public users of the owner's land.

(b) These agreements may also provide that the State will indemnify the owner, its affiliates, and their respective heirs, executors, administrators, representatives, successors, trustees, guardians, assigns, lessees, officers, directors, stockholders, employees, agents, and partners, for property losses incurred due to public use[-], subject to the following provisions:

- (1) The attorney general may review any claim;
- (2) The attorney general may refer a claim associated with property loss to the chairperson of the board of land and natural resources for informal resolution subject to the terms of an agreement;
- (3) All claims of property loss that are subject to the terms of an agreement shall be reviewed in the first instance by the chairperson for resolution as provided for in an agreement. The chairperson may compromise or settle claims for property loss from the trail and access program special funds for an amount not exceeding \$10,000 per fiscal year, and the

chairperson may pay claims for property loss up to this amount without the review of the attorney general;

- (4) Upon referral by the chairperson, the attorney general, in the attorney general's discretion, shall make determinations of whether a claim for property loss would or would not be subject to the terms of an agreement; and
- (5) Claims greater than \$10,000 per fiscal year shall be subject to appropriation and allotment.

[(b)] (c) The existence of an agreement does not allow an action to be brought against the State. The State shall not be made a party in any action solely because of the existence of an agreement to defend or indemnify. Any action defended by the State pursuant to an agreement shall be deemed an action against the owner, and the State may assert all defenses available to the owner[-], its affiliates, and their respective heirs, executors, administrators, representatives, successors, trustees, guardians, assigns, lessees, officers, directors, stockholders, employees, agents, and partners.

[(e)] (d) If the agreement provides for indemnification by the State, no judgment shall be executed against an owner, its affiliates, and their respective heirs, executors, administrators, representatives, successors, trustees, guardians, assigns, lessees, officers, directors, stockholders, employees, agents, and partners, until the legislature has reviewed and approved the judgment.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2005.

(Approved June 30, 2005.)

## ACT 176

H.B. NO. 1318

A Bill for an Act Relating to Public Employees.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 78, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§78- **Leave of absence to serve as bone marrow donor or organ donor.** Any officer or employee in the service of the State or any of the several counties shall be entitled to:

- (1) Seven days of paid leave each calendar year to serve as a bone marrow donor; and
- (2) Thirty days of paid leave each calendar year to serve as an organ donor.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved June 30, 2005.)

### Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Government Records.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 6, Session Laws of Hawaii 2002, authorized the supreme court to create and retain court case, fiscal, and administrative records in electronic format and to convert existing records to electronic form.

Numerous state laws require records retention by state and county agencies, either in paper form or by means of microfilm or microfiche. Many current laws do not recognize alternative record creation and storage media that are available, in particular, electronic records retention.

The State is constantly examining ways in which its operations may be streamlined and made more efficient and cost effective. The legislature finds that allowing the creation, use, and storage of government records in electronic format, as well as the conversion of existing paper and microfilm documents to electronic documents, will effectively reduce the significant paperwork and associated costs in the daily operations of state government.

The purpose of this Act is to allow state and county agencies to create and maintain their records in electronic format as an alternative to paper and microfilmed records.

SECTION 2. Section 46-43, Hawaii Revised Statutes, is amended to read as follows:

~~“§46-43 [Destruction of vouchers, documents, etc. Any county officer, or the officer’s authorized subordinate, may with the consent of a committee composed of the director of finance, the county’s legal advisor, and members of the finance committee of the legislative body of the county, or the authorized representatives of the officers,] County records. (a) Notwithstanding the provisions of any other law to the contrary, the county legislative body shall determine whether, and the extent to which, the county shall create, accept, retain, or store in electronic form any records and convert records to electronic form.~~

~~(b) The director of finance of each county, with the approval of the legislative body and the legal advisor of the county, may authorize the destruction by burning, machine shredding, chemical disintegration, or other acceptable method of disposal of:~~

- ~~(1) All warrants of the county that have been paid and that bear any date ten years prior to the date of destruction; and~~
  - ~~(2) All bonds and interest coupons of the county that have been canceled or paid and that bear any date two years prior to the date of destruction.~~
- ~~(c) The director of finance, with the approval of the county legislative body and the county’s legal advisor, shall determine the care, custody, and disposition of other county records and may destroy all vouchers, documents, and other records or papers, exclusive of records required[,] either by law or by the legislative body of the county[,] to be permanently retained, [which] that have been on file or retained for a minimum period to be determined by the legislative body of the county by resolution.”~~

SECTION 3. Section 92-29, Hawaii Revised Statutes, is amended to read as follows:



**“§92-29 Reproduction of government records ~~on films~~.** Any public officer having the care and custody of any record, paper, or document may cause the same to be photographed, microphotographed, ~~or otherwise~~ reproduced on film~~[-~~The film shall be of durable material and the], or copied to an electronic format. Any device or electronic storage system used to copy or reproduce the record, paper, or document ~~on the film~~ shall ~~be one which~~ accurately ~~reproduces~~ reflect the information in the original thereof in all details.”

SECTION 4. Section 92-30, Hawaii Revised Statutes, is amended to read as follows:

**“§92-30 [Film] Copy deemed original record.** ~~[Such]~~ A photograph, microphotograph, [or] reproduction on film, or electronic copy of a government record shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. A transcript, exemplification, facsimile, or certified copy thereof ~~[shall]~~, for all purposes recited ~~[herein,] in this section, shall~~ be deemed to be a transcript, exemplification, facsimile, or certified copy of the original record.”

SECTION 5. Section 92-31, Hawaii Revised Statutes, is amended to read as follows:

**“§92-31 Disposition of original~~[-~~Such] record.** A photograph, microphotograph, ~~[or]~~ reproduction on film, or electronic form of a government record shall be placed in conveniently accessible files and provisions made for preserving, examining, and using the same. Thereafter, ~~[such]~~ a public officer, after having first received the written approval of the comptroller ~~[described]~~ as provided in section 94-3, may cause such record, paper, or document to be destroyed. The comptroller may require, as a prerequisite to the granting of such approval, that a reproduction or print of such photograph, microphotograph, or reproduction on film, or electronic form of the record be delivered into the custody of the public archives for safekeeping. The comptroller may also require the delivery into the custody of another governmental department or agency or a research library of any such record, paper, or document proposed to be destroyed under the provisions of this section.”

SECTION 6. Section 94-3, Hawaii Revised Statutes, is amended to read as follows:

**“§94-3 Disposal of government records generally.** (a) Each public officer, except public officers of the judiciary~~[-]~~ and the legislative branch of government, having the care and custody of any government records shall submit to the state comptroller a list of records for disposal, which shall include the name of the office, department, or bureau, the subject of the records for disposal and the inclusive dates of the records. The comptroller shall determine the disposition of the records; stating whether ~~[such]~~ the records should be retained by the office, department, or bureau; be transferred to the public archives, the University of Hawaii, the Hawaiian Historical Society, or other agency; or be destroyed. The comptroller shall have full power of disposal of all records submitted for ~~[such]~~ this purpose. The records of all records disposed of, including lists submitted by the public officers, and the action taken by the comptroller, shall be kept on proper forms, specified by the comptroller, one copy of which shall be filed in the office, department, or bureau where the records originated, one copy shall be filed in the office of the attorney general, and the original shall be filed in the public archives.

**ACT 178**

(b) If requested, the comptroller shall provide assistance to the legislative branch of government or any agency or entity therein in establishing policies relating to the disposal of government records.”

SECTION 7. Section 46-44, Hawaii Revised Statutes, is repealed.

SECTION 8. Statutory material to be repealed is bracketed and stricken.<sup>1</sup> New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 2005.

(Approved June 30, 2005.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 178**

H.B. NO. 100

A Bill for an Act Relating to the State Budget.

*Be It Enacted by the Legislature of the State of Hawaii:*

**PART I. GENERAL PROVISIONS**

SECTION 1. SHORT TITLE. This Act shall be known and may be cited as the General Appropriations Act of 2005.

SECTION 2. DEFINITIONS. Unless otherwise clear from the context, as used in this Act:

- (a) “Program ID” means the unique identifier for the specific program, and consists of the abbreviation for the organization responsible for carrying out the program, followed by the organization number for the program.
- (b) “Expending agency” means the executive department, independent commission, bureau, office, board, or other establishment of the state government (other than the legislature, office of Hawaiian affairs and judiciary), the political subdivisions of the State, or any quasi-public institution supported in whole or in part by state funds, which is authorized to expend specified appropriations made by this Act. Abbreviations where used to denote the expending agency shall mean the following:

- AGR Department of Agriculture
- AGS Department of Accounting and General Services
- ATG Department of the Attorney General
- BED Department of Business, Economic Development and Tourism
- BUF Department of Budget and Finance
- CCA Department of Commerce and Consumer Affairs
- DEF Department of Defense
- EDN Department of Education
- GOV Office of the Governor
- HHL Department of Hawaiian Home Lands
- HMS Department of Human Services

HRD Department of Human Resources Development  
 HTH Department of Health  
 LBR Department of Labor and Industrial Relations  
 LNR Department of Land and Natural Resources  
 LTG Office of the Lieutenant Governor  
 PSD Department of Public Safety  
 SUB Subsidies  
 TAX Department of Taxation  
 TRN Department of Transportation  
 UOH University of Hawaii  
 CCH City and County of Honolulu  
 COH County of Hawaii  
 COK County of Kauai  
 COM County of Maui

- (c) "Means of financing," or "MOF" means the source from which funds are appropriated, or authorized, as the case may be, to be expended for the programs and projects specified in this Act. All appropriations are followed by letter symbols. Such letter symbols, where used, shall have the following meanings:
- A general funds
  - B special funds
  - C general obligation bond fund
  - D general obligation bond fund with debt service cost to be paid from special funds
  - E revenue bond funds
  - J federal aid interstate funds
  - K federal aid primary funds
  - L federal aid secondary funds
  - M federal aid urban funds
  - N other federal funds
  - R private contributions
  - S county funds
  - T trust funds
  - U interdepartmental transfers
  - W revolving funds
  - X other funds
- (d) "Position ceiling" means the maximum number of permanent positions that an expending agency is authorized for a particular program during a specified period or periods, as denoted by an asterisk.
- (e) "Capital project number" means the official number of the capital project, as assigned by the responsible organization.

## PART II. PROGRAM APPROPRIATIONS

SECTION 3. APPROPRIATIONS. The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are hereby appropriated or authorized, as the case may be, from the means of financing specified to the expending agencies designated for the fiscal biennium beginning July 1, 2005, and ending June 30, 2007. The total expenditures and the number of positions in each fiscal year of the biennium shall not exceed the sums and the number indicated for each fiscal year, except as provided elsewhere in this Act, or as provided by general law.

PROGRAM APPROPRIATIONS

| ITEM NO.   | PROG. ID           | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS      |       |                     |       |
|--|--------------------|---------|------------------|---------------------|-------|---------------------|-------|
|  |                    |         |                  | FISCAL YEAR 2005-06 | M O F | FISCAL YEAR 2006-07 | M O F |
| <b>A. ECONOMIC DEVELOPMENT</b>                       |                    |         |                  |                     |       |                     |       |
| 1. BED100 - STRATEGIC MARKETING & SUPPORT            |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | BED              | 18.00*              |       | 18.00*              |       |
|  |                    |         | BED              | 1,852,208A          |       | 1,652,208A          |       |
|  |                    |         | BED              | 250,000N            |       | 250,000N            |       |
|  | INVESTMENT CAPITAL |         | BED              | 1,821,915W          |       | 1,821,915W          |       |
|  |                    |         | BED              | 300,000C            |       |                     | C     |
| 2. BED105 - ARTS, FILM AND ENTERTAINMENT             |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | BED              | 9.00*               |       | 9.00*               |       |
|  |                    |         |                  | 1,307,414A          |       | 1,182,414A          |       |
| 3. BED107 - FOREIGN TRADE ZONE                       |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | BED              | 19.00*              |       | 19.00*              |       |
|  |                    |         |                  | 1,955,541B          |       | 1,955,541B          |       |
| 4. BED120 - ENERGY AND NATURAL RESOURCES             |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | BED              | 11.00*              |       | 11.00*              |       |
|  |                    |         | BED              | 1,198,347A          |       | 1,198,347A          |       |
|  |                    |         | BED              | 3,608,674N          |       | 3,608,674N          |       |
|  |                    |         | BED              | 1,861,769U          |       | 1,561,769U          |       |
| 5. BED142 - GENERAL SUPPORT FOR ECONOMIC DEVELOPMENT |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | BED              | 34.00*              |       | 34.00*              |       |
|  | INVESTMENT CAPITAL |         | BED              | 2,250,586A          |       | 2,250,586A          |       |
|  |                    |         | BED              | 200,000C            |       |                     | C     |
| 6. BED113 - TOURISM                                  |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | BED              | 25,000A             |       |                     | A     |
|  |                    |         |                  | 3.00*               |       | 3.00*               |       |
|  |                    |         | BED              | 117,200,000B        |       | 118,700,000B        |       |
| 7. AGR101 - FINANCIAL ASSISTANCE FOR AGRICULTURE     |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | AGR              | 10.00*              |       | 10.00*              |       |
|  |                    |         | AGR              | 1,054,203B          |       | 1,054,203B          |       |
|  |                    |         | AGR              | 5,000,000W          |       | 5,000,000W          |       |
| 8. AGR122 - PLANT, PEST, AND DISEASE CONTROL         |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | AGR              | 88.00*              |       | 88.00*              |       |
|  |                    |         | AGR              | 4,569,063A          |       | 4,602,903A          |       |
|  |                    |         | AGR              | 327,533N            |       | 327,533N            |       |
|  |                    |         | AGR              | 498,371T            |       | 512,962T            |       |
|  |                    |         |                  | 9.00*               |       | 9.00*               |       |
|  |                    |         | AGR              | 494,816U            |       | 494,816U            |       |
|  |                    |         | AGR              | 58,360W             |       | 58,360W             |       |
| 9. AGR131 - RABIES QUARANTINE                        |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | AGR              | 33.00*              |       | 33.00*              |       |
|  |                    |         |                  | 2,787,272B          |       | 2,787,272B          |       |
| 10. AGR132 - ANIMAL DISEASE CONTROL                  |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | AGR              | 22.50*              |       | 22.50*              |       |
|  |                    |         | AGR              | 1,207,114A          |       | 1,207,114A          |       |
|  |                    |         |                  | 397,454U            |       | 409,068U            |       |
| 11. LNR172 - FORESTRY - PRODUCTS DEVELOPMENT         |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | LNR              | 19.00*              |       | 19.00*              |       |
|  |                    |         | LNR              | 758,307A            |       | 758,307A            |       |
|  |                    |         | LNR              | 700,000B            |       | 700,000B            |       |

## PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID           | PROGRAM                                       | EXPENDING AGENCY | APPROPRIATIONS      |       |                     |       |
|----------|--------------------|---|------------------|---------------------|-------|---------------------|-------|
|          |                    |   |                  | FISCAL YEAR 2005-06 | M O F | FISCAL YEAR 2006-07 | M O F |
|          |                    |   | LNR              | 2.50*               |       | 2.50*               |       |
|          |                    |   | LNR              | 416,785N            |       | 416,785N            |       |
| 12.      | AGR151             | QUALITY AND PRICE ASSURANCE                   |                  |                     |       |                     |       |
|          | OPERATING          |   | AGR              | 24.00*              |       | 24.00*              |       |
|          |                    |   | AGR              | 1,291,013A          |       | 1,291,013A          |       |
|          |                    |   | AGR              | 2.00*               |       | 2.00*               |       |
|          |                    |   | AGR              | 277,675B            |       | 277,675B            |       |
|          |                    |   | AGR              | 52,424N             |       | 52,424N             |       |
|          |                    |   | AGR              | 300,000T            |       | 300,000T            |       |
|          |                    |   | AGR              | 470,926W            |       | 470,926W            |       |
| 13.      | AGR171             | AGRICULTURAL DEVELOPMENT AND MARKETING        |                  |                     |       |                     |       |
|          | OPERATING          |   | AGR              | 18.00*              |       | 18.00*              |       |
|          |                    |   | AGR              | 1,871,776A          |       | 1,871,776A          |       |
|          |                    |   | AGR              | 75,000N             |       | 75,000N             |       |
| 14.      | AGR141             | AGRICULTURAL RESOURCE MANAGEMENT              |                  |                     |       |                     |       |
|          | OPERATING          |   | AGR              | 4.00*               |       | 4.00*               |       |
|          |                    |   | AGR              | 562,417A            |       | 562,417A            |       |
|          |                    |   | AGR              | 3.00*               |       | 3.00*               |       |
|          |                    |   | AGR              | 405,580B            |       | 405,580B            |       |
|          |                    |   | AGR              | 13.00*              |       | 13.00*              |       |
|          | INVESTMENT CAPITAL |   | AGR              | 1,312,615W          |       | 1,310,577W          |       |
|          |                    |   | AGR              | 3,600,000C          |       | C                   |       |
|          |                    |   | AGR              | 3,000,000N          |       | N                   |       |
| 15.      | AGR161             | AGRIBUSINESS DEVELOPMENT AND RESEARCH         |                  |                     |       |                     |       |
|          | OPERATING          |   | AGR              | 140,558A            |       | 140,558A            |       |
|          |                    |   | AGR              | 3,357,718W          |       | 3,357,718W          |       |
| 16.      | AGR192             | GENERAL ADMINISTRATION FOR AGRICULTURE        |                  |                     |       |                     |       |
|          | OPERATING          |   | AGR              | 29.00*              |       | 29.00*              |       |
|          |                    |   | AGR              | 1,611,328A          |       | 1,611,328A          |       |
| 17.      | LNR153             | COMMERCIAL FISHERIES AND RESOURCE ENHANCEMENT |                  |                     |       |                     |       |
|          | OPERATING          |   | LNR              | 9.00*               |       | 9.00*               |       |
|          |                    |   | LNR              | 710,130A            |       | 710,130A            |       |
|          |                    |   | LNR              | 314,193B            |       | 314,193B            |       |
|          |                    |   | LNR              | 308,210N            |       | 308,210N            |       |
| 18.      | AGR153             | AQUACULTURE DEVELOPMENT PROGRAM               |                  |                     |       |                     |       |
|          | OPERATING          |   | AGR              | 8.00*               |       | 8.00*               |       |
|          |                    |   | AGR              | 502,844A            |       | 502,844A            |       |
|          |                    |   | AGR              | 30,000B             |       | 30,000B             |       |
|          |                    |   | AGR              | 85,115N             |       | 85,115N             |       |
| 19.      | BED143             | HIGH TECHNOLOGY DEVELOPMENT CORPORATION       |                  |                     |       |                     |       |
|          | OPERATING          |   | BED              | 1.50*               |       | 1.50*               |       |
|          |                    |   | BED              | 936,930A            |       | 936,930A            |       |
|          |                    |   | BED              | 1.50*               |       | 1.50*               |       |
|          |                    |   | BED              | 3,871,030B          |       | 3,846,030B          |       |
|          |                    |   | BED              | 3,789,392N          |       | 3,489,392N          |       |
|          |                    |   | BED              | 1,500,000W          |       | 1,500,000W          |       |
| 20.      | BED145             | HAWAII STRATEGIC DEVELOPMENT CORPORATION      |                  |                     |       |                     |       |
|          | OPERATING          |   | BED              | 1.00*               |       |                     | A     |
|          |                    |   | BED              | 92,848A             |       | 1.00*               |       |
|          |                    |   | BED              | 4,238,125W          |       | 4,356,288W          |       |

PROGRAM APPROPRIATIONS

| ITEM NO.             | PROG. ID           | PROGRAM                                       | EXPENDING AGENCY | APPROPRIATIONS      |       |                     |       |
|----------------------|--------------------|---|------------------|---------------------|-------|---------------------|-------|
|                      |                    |   |                  | FISCAL YEAR 2005-06 | M O F | FISCAL YEAR 2006-07 | M O F |
| 21.                  | BED146             | NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY |                  |                     |       |                     |       |
|                      | OPERATING          |   | BED              | 169,993A            |       |                     | A     |
|                      |                    |   | BED              | 3,709,604B          |       | 4,114,477B          |       |
|                      |                    |   | BED              | 6,918,525N          |       | 6,843,525N          |       |
| 22.                  | LNR141             | WATER AND LAND DEVELOPMENT                    |                  |                     |       |                     |       |
|                      | OPERATING          |   | LNR              | 3.00*               |       | 3.00*               |       |
|                      |                    |   | LNR              | 285,052A            |       | 285,052A            |       |
|                      |                    |   | LNR              | 110,000W            |       | 110,000W            |       |
|                      | INVESTMENT CAPITAL |   | LNR              | 850,000C            |       |                     | C     |
|                      |                    |   | LNR              | 1,200,000N          |       |                     | N     |
|                      |                    |   | LNR              | 600,000S            |       |                     | S     |
| 23.                  | BED150             | HAWAII COMMUNITY DEVELOPMENT AUTHORITY        |                  |                     |       |                     |       |
|                      | OPERATING          |   | BED              | 2.00*               |       | 2.00*               |       |
|                      |                    |   | BED              | 262,281A            |       | 288,245A            |       |
|                      |                    |   | BED              | 2,500,000B          |       | 2,500,000B          |       |
|                      |                    |   | BED              | 12,865N             |       |                     | N     |
|                      |                    |   | BED              | 546,725W            |       | 533,860W            |       |
|                      | INVESTMENT CAPITAL |   | BED              | 3,103,000C          |       | 2,603,000C          |       |
| 24.                  | BED151             | ALOHA TOWER DEVELOPMENT CORPORATION           |                  |                     |       |                     |       |
|                      | OPERATING          |   | BED              | 1.00*               |       | 1.00*               |       |
|                      |                    |   |                  | 1,533,386B          |       | 1,533,386B          |       |
| <b>B. EMPLOYMENT</b> |                    |   |                  |                     |       |                     |       |
| 1.                   | LBR111             | PLACEMENT SERVICES                            |                  |                     |       |                     |       |
|                      | OPERATING          |   | LBR              | 4.30*               |       | 4.30*               |       |
|                      |                    |   | LBR              | 296,099A            |       | 296,099A            |       |
|                      |                    |   | LBR              | 6,777,527B          |       | 6,777,527B          |       |
|                      |                    |   |                  | 119.20*             |       | 119.20*             |       |
|                      |                    |   | LBR              | 48,902,800N         |       | 48,902,800N         |       |
|                      |                    |   | LBR              | 3,567,524U          |       | 3,567,524U          |       |
| 2.                   | LBR135             | WORKFORCE DEVELOPMENT COUNCIL                 |                  |                     |       |                     |       |
|                      | OPERATING          |   | LBR              | 3.00*               |       | 3.00*               |       |
|                      |                    |   | LBR              | 227,100A            |       | 177,100A            |       |
|                      |                    |   | LBR              | 434,606N            |       | 434,606N            |       |
| 3.                   | LBR143             | OCCUPATIONAL SAFETY AND HEALTH                |                  |                     |       |                     |       |
|                      | OPERATING          |   | LBR              | 39.00*              |       | 39.00*              |       |
|                      |                    |   |                  | 1,918,306A          |       | 1,918,306A          |       |
|                      |                    |   |                  | 25.00*              |       | 25.00*              |       |
|                      |                    |   | LBR              | 2,149,301N          |       | 2,149,301N          |       |
|                      |                    |   | LBR              | 50,000W             |       | 50,000W             |       |
| 4.                   | LBR152             | WAGE STANDARDS AND FAIR EMPLOYMENT PRACTICES  |                  |                     |       |                     |       |
|                      | OPERATING          |   | LBR              | 24.50*              |       | 24.50*              |       |
|                      |                    |   | LBR              | 1,173,257A          |       | 1,173,257A          |       |
|                      |                    |   | LBR              | 53,131U             |       | 53,131U             |       |
| 5.                   | LBR153             | CIVIL RIGHTS COMMISSION                       |                  |                     |       |                     |       |
|                      | OPERATING          |   | LBR              | 21.50*              |       | 21.50*              |       |
|                      |                    |   | LBR              | 1,147,692A          |       | 1,147,692A          |       |
|                      |                    |   |                  | 5.50*               |       | 5.50*               |       |
|                      |                    |   | LBR              | 545,706N            |       | 545,706N            |       |

PROGRAM APPROPRIATIONS

| ITEM NO.   | PROG. ID           | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS      |       |                     |       |
|--|--------------------|---------|------------------|---------------------|-------|---------------------|-------|
|  |                    |         |                  | FISCAL YEAR 2005-06 | M O F | FISCAL YEAR 2006-07 | M O F |
| 6. LBR161 - PUBLIC AND PRIVATE EMPLOYMENT                  |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | LBR              | 1.00*               |       | 1.00*               |       |
|  |                    |         |                  | 421,716A            |       | 421,716A            |       |
| 7. LBR171 - UNEMPLOYMENT COMPENSATION                      |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | LBR              | 166,626,650B        |       | 166,626,650B        |       |
|  |                    |         | LBR              | 218.30*             |       | 218.30*             |       |
|  |                    |         | LBR              | 14,811,202N         |       | 14,811,202N         |       |
| 8. LBR183 - DISABILITY COMPENSATION                        |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | LBR              | 109.00*             |       | 109.00*             |       |
|  |                    |         | LBR              | 5,053,665A          |       | 5,053,665A          |       |
|  |                    |         | LBR              | 4.00*               |       | 4.00*               |       |
|  |                    |         | LBR              | 23,675,713B         |       | 23,675,713B         |       |
| 9. HMS802 - VOCATIONAL REHABILITATION                      |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | HMS              | 26.36*              |       | 26.36*              |       |
|  |                    |         | HMS              | 3,859,253A          |       | 3,895,309A          |       |
|  |                    |         | HMS              | 92.64*              |       | 92.64*              |       |
|  |                    |         | HMS              | 12,379,474N         |       | 12,379,474N         |       |
|  |                    |         | HMS              | 1,330,200W          |       | 1,330,200W          |       |
| 10. LBR901 - DLIR - DATA GATHERING, RESEARCH, AND ANALYSIS |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | LBR              | 8.88*               |       | 8.88*               |       |
|  |                    |         | LBR              | 738,114A            |       | 738,114A            |       |
|  |                    |         | LBR              | 28.12*              |       | 28.12*              |       |
|  |                    |         | LBR              | 2,476,695N          |       | 2,476,695N          |       |
| 11. LBR902 - GENERAL ADMINISTRATION                        |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | LBR              | 27.46*              |       | 27.46*              |       |
|  |                    |         | LBR              | 1,472,172A          |       | 1,472,172A          |       |
|  |                    |         | LBR              | 35.48*              |       | 35.48*              |       |
|  |                    |         | LBR              | 2,967,486N          |       | 2,967,486N          |       |
| 12. LBR903 - OFFICE OF COMMUNITY SERVICES                  |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | LBR              | 4.00*               |       | 4.00*               |       |
|  |                    |         | LBR              | 4,412,792A          |       | 4,112,792A          |       |
|  |                    |         | LBR              | 2.00*               |       | 2.00*               |       |
|  | INVESTMENT CAPITAL |         | LBR              | 5,831,719N          |       | 5,831,719N          |       |
|  |                    |         | LBR              | 5,900,000C          |       |                     | C     |
| 13. LBR812 - LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD  |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | LBR              | 12.00*              |       | 12.00*              |       |
|  |                    |         | LBR              | 700,256A            |       | 700,256A            |       |
| <b>C. TRANSPORTATION FACILITIES</b>                        |                    |         |                  |                     |       |                     |       |
| 1. TRN102 - HONOLULU INTERNATIONAL AIRPORT                 |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | TRN              | 588.50*             |       | 588.50*             |       |
|  |                    |         | TRN              | 87,306,848B         |       | 93,101,192B         |       |
|  |                    |         | TRN              | 4,000,000N          |       | 2,425,000N          |       |
|  | INVESTMENT CAPITAL |         | TRN              | 6,079,000B          |       | 19,145,000B         |       |
|  |                    |         | TRN              | 11,232,000N         |       | 9,135,000N          |       |
|  |                    |         | TRN              | 35,938,000X         |       |                     | X     |
| 2. TRN104 - GENERAL AVIATION                               |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | TRN              | 30.00*              |       | 30.00*              |       |
|  |                    |         | TRN              | 5,323,844B          |       | 6,187,082B          |       |
|  | INVESTMENT CAPITAL |         | TRN              | 537,000B            |       | 200,000B            |       |
|  |                    |         | TRN              | 6,285,000N          |       | 4,370,000N          |       |

## PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID           | PROGRAM  | EXPENDING AGENCY | APPROPRIATIONS      |       |                     |       |
|----------|--------------------|--|------------------|---------------------|-------|---------------------|-------|
|          |                    |  |                  | FISCAL YEAR 2005-06 | M O F | FISCAL YEAR 2006-07 | M O F |
| 3.       |                    | TRN111 - HILO INTERNATIONAL AIRPORT            |                  |                     |       |                     |       |
|          | OPERATING          |  | TRN              | 79.00*              |       | 79.00*              |       |
|          |                    |  | TRN              | 11,939,954B         |       | 10,248,092B         |       |
|          | INVESTMENT CAPITAL |  | TRN              | 2,000,000N          |       | 760,000N            |       |
|          |                    |  |                  |                     | B     | 1,250,000B          |       |
| 4.       |                    | TRN114 - KONA INTERNATIONAL AIRPORT AT KEAHOLE |                  |                     |       |                     |       |
|          | OPERATING          |  | TRN              | 83.00*              |       | 83.00*              |       |
|          |                    |  | TRN              | 12,166,267B         |       | 11,343,561B         |       |
|          | INVESTMENT CAPITAL |  | TRN              | 760,000N            |       | N                   |       |
|          |                    |  | TRN              | 1,280,000B          |       | 3,000,000B          |       |
|          |                    |  | TRN              | 1,817,000N          |       | N                   |       |
|          |                    |  | TRN              | 1,225,000X          |       | X                   |       |
| 5.       |                    | TRN116 - WAIMEA-KOHALA AIRPORT                 |                  |                     |       |                     |       |
|          | OPERATING          |  | TRN              | 2.00*               |       | 2.00*               |       |
|          |                    |  | TRN              | 608,082B            |       | 423,868B            |       |
|          | INVESTMENT CAPITAL |  | TRN              | N                   |       | 215,704N            |       |
|          |                    |  | TRN              | 56,000B             |       | 300,000B            |       |
|          |                    |  | TRN              | 659,000N            |       | 3,200,000N          |       |
| 6.       |                    | TRN118 - UPOLU AIRPORT                         |                  |                     |       |                     |       |
|          | OPERATING          |  | TRN              |                     |       |                     |       |
|          |                    |  |                  | 343,500B            |       | 149,500B            |       |
| 7.       |                    | TRN131 - KAHULUI AIRPORT                       |                  |                     |       |                     |       |
|          | OPERATING          |  | TRN              | 149.00*             |       | 149.00*             |       |
|          |                    |  | TRN              | 19,423,988B         |       | 17,285,075B         |       |
|          | INVESTMENT CAPITAL |  | TRN              | 600,000N            |       | N                   |       |
|          |                    |  | TRN              | 3,675,000B          |       | 7,450,000B          |       |
|          |                    |  | TRN              | 2,329,000N          |       | 13,300,000N         |       |
|          |                    |  | TRN              | 10,293,000X         |       | X                   |       |
| 8.       |                    | TRN133 - HANA AIRPORT                          |                  |                     |       |                     |       |
|          | OPERATING          |  | TRN              | 1.00*               |       | 1.00*               |       |
|          |                    |  | TRN              | 140,158B            |       | 287,716B            |       |
|          | INVESTMENT CAPITAL |  | TRN              | N                   |       | 215,704N            |       |
|          |                    |  | TRN              | 56,000B             |       | 300,000B            |       |
|          |                    |  | TRN              | 659,000N            |       | 3,200,000N          |       |
| 9.       |                    | TRN135 - KAPALUA AIRPORT                       |                  |                     |       |                     |       |
|          | OPERATING          |  | TRN              | 6.00*               |       | 6.00*               |       |
|          |                    |  |                  | 1,318,950B          |       | 1,063,877B          |       |
| 10.      |                    | TRN141 - MOLOKAI AIRPORT                       |                  |                     |       |                     |       |
|          | OPERATING          |  | TRN              | 13.50*              |       | 13.50*              |       |
|          |                    |  | TRN              | 1,225,026B          |       | 1,406,355B          |       |
|          | INVESTMENT CAPITAL |  | TRN              | 20,000B             |       | B                   |       |
|          |                    |  | TRN              | 915,000E            |       | E                   |       |
|          |                    |  | TRN              | 1,400,000N          |       | N                   |       |
| 11.      |                    | TRN143 - KALAUPAPA AIRPORT                     |                  |                     |       |                     |       |
|          | OPERATING          |  | TRN              | 1.00*               |       | 1.00*               |       |
|          |                    |  | TRN              | 228,621B            |       | 164,947B            |       |
|          | INVESTMENT CAPITAL |  | TRN              | N                   |       | 215,704N            |       |
|          |                    |  | TRN              | 56,000B             |       | 300,000B            |       |
|          |                    |  | TRN              | 659,000N            |       | 3,200,000N          |       |
| 12.      |                    | TRN151 - LANAI AIRPORT                         |                  |                     |       |                     |       |
|          | OPERATING          |  | TRN              | 10.00*              |       | 10.00*              |       |
|          |                    |  |                  | 1,400,011B          |       | 1,046,823B          |       |



## PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID | PROGRAM                       | EXPENDING AGENCY | APPROPRIATIONS      |       |                     |       |
|----------|----------|-------------------------------|------------------|---------------------|-------|---------------------|-------|
|          |          |                               |                  | FISCAL YEAR 2005-06 | M O F | FISCAL YEAR 2006-07 | M O F |
|          |          | INVESTMENT CAPITAL            | TRN              | 600,000E            |       |                     | E     |
|          |          |                               | TRN              | 550,000N            |       |                     | N     |
| 13.      | TRN161   | LIHUE AIRPORT                 |                  |                     |       |                     |       |
|          |          | OPERATING                     | TRN              | 100.00*             |       | 100.00*             |       |
|          |          |                               | TRN              | 13,132,822B         |       | 16,690,578B         |       |
|          |          |                               | TRN              | 2,000,000N          |       | 2,260,000N          |       |
|          |          | INVESTMENT CAPITAL            | TRN              | 2,942,000B          |       |                     | B     |
|          |          |                               | TRN              | 19,320,000N         |       |                     | N     |
|          |          |                               | TRN              | 370,000X            |       |                     | X     |
| 14.      | TRN163   | PORT ALLEN AIRPORT            |                  |                     |       |                     |       |
|          |          | OPERATING                     | TRN              | 1,841B              |       | 26,841B             |       |
| 15.      | TRN195   | AIRPORTS ADMINISTRATION       |                  |                     |       |                     |       |
|          |          | OPERATING                     | TRN              | 109.00*             |       | 109.00*             |       |
|          |          |                               | TRN              | 99,457,463B         |       | 98,834,063B         |       |
|          |          | INVESTMENT CAPITAL            | TRN              | 16,166,000B         |       | 14,376,000B         |       |
|          |          |                               | TRN              | 29,750,000N         |       | 17,770,000N         |       |
| 16.      | TRN301   | HONOLULU HARBOR               |                  |                     |       |                     |       |
|          |          | OPERATING                     | TRN              | 119.00*             |       | 119.00*             |       |
|          |          |                               | TRN              | 21,344,565B         |       | 21,004,565B         |       |
|          |          | INVESTMENT CAPITAL            | TRN              | 5,900,000B          |       |                     | B     |
|          |          |                               | TRN              |                     |       | 6,000,000E          |       |
| 17.      | TRN303   | KALAELOA BARBERS POINT HARBOR |                  |                     |       |                     |       |
|          |          | OPERATING                     | TRN              | 3.00*               |       | 3.00*               |       |
|          |          |                               | TRN              | 792,522B            |       | 792,522B            |       |
|          |          | INVESTMENT CAPITAL            | TRN              | 225,000B            |       | 1,800,000B          |       |
| 18.      | TRN305   | KEWALO BASIN                  |                  |                     |       |                     |       |
|          |          | OPERATING                     | TRN              | 2.00*               |       | 2.00*               |       |
|          |          |                               | TRN              | 1,263,808B          |       | 1,263,808B          |       |
| 19.      | TRN311   | HILO HARBOR                   |                  |                     |       |                     |       |
|          |          | OPERATING                     | TRN              | 15.00*              |       | 15.00*              |       |
|          |          |                               | TRN              | 2,183,405B          |       | 2,213,305B          |       |
|          |          | INVESTMENT CAPITAL            | TRN              | 1,900,000B          |       |                     | B     |
|          |          |                               | TRN              |                     |       | 45,000,000E         |       |
| 20.      | TRN313   | KAWAIHAE HARBOR               |                  |                     |       |                     |       |
|          |          | OPERATING                     | TRN              | 1.00*               |       | 1.00*               |       |
|          |          |                               | TRN              | 945,172B            |       | 715,172B            |       |
|          |          | INVESTMENT CAPITAL            | TRN              | 200,000B            |       |                     | B     |
| 21.      | TRN331   | KAHULUI HARBOR                |                  |                     |       |                     |       |
|          |          | OPERATING                     | TRN              | 18.00*              |       | 18.00*              |       |
|          |          |                               | TRN              | 2,650,570B          |       | 2,698,226B          |       |
|          |          | INVESTMENT CAPITAL            | TRN              | 1,200,000B          |       | 1,500,000B          |       |
| 22.      | TRN341   | KAUNAKAKAI HARBOR             |                  |                     |       |                     |       |
|          |          | OPERATING                     | TRN              | 1.00*               |       | 1.00*               |       |
|          |          |                               | TRN              | 482,755B            |       | 501,862B            |       |
| 23.      | TRN361   | NAWILIWILI HARBOR             |                  |                     |       |                     |       |
|          |          | OPERATING                     | TRN              | 15.00*              |       | 15.00*              |       |
|          |          |                               | TRN              | 2,194,874B          |       | 2,204,378B          |       |
|          |          | INVESTMENT CAPITAL            | TRN              | 375,000B            |       |                     | B     |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID           | PROGRAM                   | EXPENDING AGENCY | APPROPRIATIONS      |       |                     |       |
|----------|--------------------|---------------------------|------------------|---------------------|-------|---------------------|-------|
|          |                    |                           |                  | FISCAL YEAR 2005-06 | M O F | FISCAL YEAR 2006-07 | M O F |
| 24.      | TRN363             | - PORT ALLEN HARBOR       |                  |                     |       |                     |       |
|          | OPERATING          |                           | TRN              | 1.00*               |       | 1.00*               |       |
|          | INVESTMENT CAPITAL |                           | TRN              | 895,940B            |       | 935,873B            |       |
|          |                    |                           |                  | 500,000B            |       |                     | B     |
| 25.      | TRN351             | - KAUMALAPAU HARBOR       |                  |                     |       |                     |       |
|          | OPERATING          |                           | TRN              | 208,000B            |       | 208,000B            |       |
|          | INVESTMENT CAPITAL |                           | TRN              | 500,000B            |       | 4,000,000B          |       |
| 26.      | TRN395             | - HARBORS ADMINISTRATION  |                  |                     |       |                     |       |
|          | OPERATING          |                           | TRN              | 57.00*              |       | 57.00*              |       |
|          | INVESTMENT CAPITAL |                           | TRN              | 45,283,463B         |       | 45,402,640B         |       |
|          |                    |                           | TRN              | 7,863,000B          |       | 3,038,000B          |       |
|          |                    |                           | TRN              | 20,000,000D         |       | 20,000,000D         |       |
|          |                    |                           | TRN              | 2,000,000N          |       |                     | N     |
| 27.      | TRN501             | - OAHU HIGHWAYS           |                  |                     |       |                     |       |
|          | OPERATING          |                           | TRN              | 228.00*             |       | 228.00*             |       |
|          |                    |                           | TRN              | 74,037,884B         |       | 65,731,575B         |       |
|          | INVESTMENT CAPITAL |                           | TRN              | 900,000N            |       | 900,000N            |       |
|          |                    |                           | TRN              | 3,000,000B          |       |                     | B     |
|          |                    |                           | TRN              | 19,400,000E         |       | 19,560,000E         |       |
|          |                    |                           | TRN              | 40,720,000N         |       | 59,630,000N         |       |
| 28.      | TRN511             | - HAWAII HIGHWAYS         |                  |                     |       |                     |       |
|          | OPERATING          |                           | TRN              | 124.00*             |       | 124.00*             |       |
|          | INVESTMENT CAPITAL |                           | TRN              | 25,735,257B         |       | 26,787,291B         |       |
|          |                    |                           | TRN              | 6,451,000E          |       | 6,801,000E          |       |
|          |                    |                           | TRN              | 39,999,000N         |       | 52,589,000N         |       |
| 29.      | TRN531             | - MAUI HIGHWAYS           |                  |                     |       |                     |       |
|          | OPERATING          |                           | TRN              | 65.00*              |       | 65.00*              |       |
|          | INVESTMENT CAPITAL |                           | TRN              | 17,506,124B         |       | 17,472,079B         |       |
|          |                    |                           | TRN              | 19,520,000E         |       | 4,255,000E          |       |
|          |                    |                           | TRN              | 80,000N             |       | 8,560,000N          |       |
| 30.      | TRN541             | - MOLOKAI HIGHWAYS        |                  |                     |       |                     |       |
|          | OPERATING          |                           | TRN              | 12.00*              |       | 12.00*              |       |
|          | INVESTMENT CAPITAL |                           | TRN              | 4,536,206B          |       | 4,161,302B          |       |
|          |                    |                           | TRN              | 565,000E            |       | 235,000E            |       |
|          |                    |                           | TRN              | 1,495,000N          |       | 940,000N            |       |
| 31.      | TRN551             | - LANAI HIGHWAYS          |                  |                     |       |                     |       |
|          | OPERATING          |                           | TRN              | 4.00*               |       | 4.00*               |       |
|          |                    |                           |                  | 918,193B            |       | 824,931B            |       |
| 32.      | TRN561             | - KAUAI HIGHWAYS          |                  |                     |       |                     |       |
|          | OPERATING          |                           | TRN              | 51.00*              |       | 51.00*              |       |
|          | INVESTMENT CAPITAL |                           | TRN              | 11,740,850B         |       | 12,660,689B         |       |
|          |                    |                           | TRN              | 9,310,000E          |       | 8,880,000E          |       |
|          |                    |                           | TRN              | 22,200,000N         |       | 31,520,000N         |       |
| 33.      | TRN595             | - HIGHWAYS ADMINISTRATION |                  |                     |       |                     |       |
|          | OPERATING          |                           | TRN              | 80.00*              |       | 80.00*              |       |
|          |                    |                           | TRN              | 78,470,756B         |       | 78,255,294B         |       |
|          |                    |                           | TRN              | 3,288,113N          |       | 3,176,226N          |       |
|          | INVESTMENT CAPITAL |                           | TRN              | 19,250,000B         |       | 18,000,000B         |       |
|          |                    |                           | TRN              | 15,265,000E         |       | 6,300,000E          |       |
|          |                    |                           | TRN              | 19,360,000N         |       | 14,000,000N         |       |

## PROGRAM APPROPRIATIONS

| ITEM NO.                           | PROG. ID           | PROGRAM                                | EXPENDING AGENCY | APPROPRIATIONS      |       |                     |       |
|------------------------------------|--------------------|--|------------------|---------------------|-------|---------------------|-------|
|                                    |                    |  |                  | FISCAL YEAR 2005-06 | M O F | FISCAL YEAR 2006-07 | M O F |
| 34.                                | TRN597             | HIGHWAY SAFETY                         |                  |                     |       |                     |       |
|                                    | OPERATING          |  | TRN              | 31.00*              |       | 31.00*              |       |
|                                    |                    |  | TRN              | 5,924,225B          |       | 5,924,225B          |       |
|                                    |                    |  |                  | 9.00*               |       | 9.00*               |       |
|                                    |                    |  | TRN              | 5,538,482N          |       | 5,538,482N          |       |
| 35.                                | TRN995             | GENERAL ADMINISTRATION                 |                  |                     |       |                     |       |
|                                    | OPERATING          |  | TRN              | 100.00*             |       | 100.00*             |       |
|                                    |                    |  | TRN              | 14,661,518B         |       | 14,661,518B         |       |
|                                    |                    |  | TRN              | 2,381,854N          |       | 2,381,854N          |       |
|                                    |                    |  | TRN              | 112,500R            |       | 112,500R            |       |
| <b>D. ENVIRONMENTAL PROTECTION</b> |                    |  |                  |                     |       |                     |       |
| 1.                                 | HTH840             | ENVIRONMENTAL MANAGEMENT               |                  |                     |       |                     |       |
|                                    | OPERATING          |  | HTH              | 53.00*              |       | 53.00*              |       |
|                                    |                    |  | HTH              | 3,225,126A          |       | 3,225,729A          |       |
|                                    |                    |  |                  | 50.20*              |       | 50.20*              |       |
|                                    |                    |  | HTH              | 60,500,843B         |       | 60,500,843B         |       |
|                                    |                    |  |                  | 47.40*              |       | 47.40*              |       |
|                                    |                    |  | HTH              | 8,184,259N          |       | 8,184,259N          |       |
|                                    |                    |  |                  | 53.40*              |       | 53.40*              |       |
|                                    | INVESTMENT CAPITAL |  | HTH              | 97,390,091W         |       | 97,390,091W         |       |
|                                    |                    |  | HTH              | 3,714,000C          |       | 3,714,000C          |       |
|                                    |                    |  | HTH              | 18,567,000N         |       | 18,567,000N         |       |
| 2.                                 | AGR846             | PESTICIDES                             |                  |                     |       |                     |       |
|                                    | OPERATING          |  | AGR              | 18.00*              |       | 18.00*              |       |
|                                    |                    |  | AGR              | 836,475A            |       | 836,475A            |       |
|                                    |                    |  |                  | 1.00*               |       | 1.00*               |       |
|                                    |                    |  | AGR              | 418,806N            |       | 418,806N            |       |
|                                    |                    |  |                  | 4.00*               |       | 4.00*               |       |
|                                    |                    |  | AGR              | 738,521W            |       | 738,521W            |       |
| 3.                                 | LNR401             | AQUATIC RESOURCES                      |                  |                     |       |                     |       |
|                                    | OPERATING          |  | LNR              | 27.00*              |       | 27.00*              |       |
|                                    |                    |  | LNR              | 2,338,928A          |       | 2,338,928A          |       |
|                                    |                    |  |                  | 1.00*               |       | 1.00*               |       |
|                                    |                    |  | LNR              | 1,188,797N          |       | 1,188,797N          |       |
| 4.                                 | LNR402             | FORESTS AND WILDLIFE RESOURCES         |                  |                     |       |                     |       |
|                                    | OPERATING          |  | LNR              | 52.00*              |       | 52.00*              |       |
|                                    |                    |  | LNR              | 5,057,911A          |       | 5,057,911A          |       |
|                                    |                    |  | LNR              | 3,023,087B          |       | 3,023,087B          |       |
|                                    |                    |  |                  | 5.50*               |       | 5.50*               |       |
|                                    |                    |  | LNR              | 5,017,900N          |       | 5,017,900N          |       |
| 5.                                 | LNR404             | WATER RESOURCES                        |                  |                     |       |                     |       |
|                                    | OPERATING          |  | LNR              | 19.00*              |       | 19.00*              |       |
|                                    |                    |  | LNR              | 1,582,432A          |       | 1,582,432A          |       |
|                                    |                    |  |                  | 3.00*               |       | 3.00*               |       |
|                                    |                    |  | LNR              | 350,246B            |       | 350,246B            |       |
| 6.                                 | LNR405             | CONSERVATION AND RESOURCES ENFORCEMENT |                  |                     |       |                     |       |
|                                    | OPERATING          |  | LNR              | 93.00*              |       | 93.00*              |       |
|                                    |                    |  | LNR              | 5,112,718A          |       | 5,169,532A          |       |
|                                    |                    |  | LNR              | 22.00*              |       | 22.00*              |       |
|                                    |                    |  | LNR              | 1,596,200B          |       | 1,558,569B          |       |
|                                    |                    |  |                  | 2.00*               |       | 2.00*               |       |
|                                    |                    |  | LNR              | 634,914N            |       | 654,598N            |       |
|                                    |                    |  |                  | 1.00*               |       | 1.00*               |       |
|                                    |                    |  | LNR              | 36,054W             |       | 36,054W             |       |

PROGRAM APPROPRIATIONS

| ITEM NO.   | PROG. ID           | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS      |       |                     |       |
|--|--------------------|---------|------------------|---------------------|-------|---------------------|-------|
|  |                    |         |                  | FISCAL YEAR 2005-06 | M O F | FISCAL YEAR 2006-07 | M O F |
| 7. LNR407 - NATURAL AREA RESERVES AND MANAGEMENT   |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | LNR              | 22.00*              |       | 22.00*              |       |
|  |                    |         | LNR              | 1,137,714A          |       | 1,137,714A          |       |
|  |                    |         |                  | 3,300,000B          |       | 3,300,000B          |       |
| 8. HTH850 - POLICY DEVELOPMENT, COORINATION, AND ANALYSIS FOR NATURAL PHYSICAL ENVIRONMENT |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | HTH              | 5.00*               |       | 5.00*               |       |
|  |                    |         |                  | 297,112A            |       | 297,170A            |       |
| 9. LNR906 - LNR - NATURAL AND PHYSICAL ENVIRONMENT   |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | LNR              | 32.00*              |       | 32.00*              |       |
|  |                    |         |                  | 1,894,007A          |       | 1,894,007A          |       |
|  |                    |         | LNR              | 5.00*               |       | 5.00*               |       |
|  | INVESTMENT CAPITAL |         | LNR              | 540,137B            |       | 575,103B            |       |
|  |                    |         |                  | 6,175,000C          |       | 2,175,000C          |       |
| 10. HTH849 - ENVIRONMENTAL HEALTH ADMINISTRATION   |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | HTH              | 14.50*              |       | 14.50*              |       |
|  |                    |         |                  | 809,237A            |       | 809,402A            |       |
|  |                    |         | HTH              | 17.50*              |       | 17.50*              |       |
|  |                    |         |                  | 3,098,129N          |       | 3,098,129N          |       |
|  |                    |         |                  | 10.00*              |       | 10.00*              |       |
|  |                    |         | HTH              | 2,974,507W          |       | 2,974,507W          |       |
| <b>E. HEALTH</b>   |                    |         |                  |                     |       |                     |       |
| 1. HTH101 - TUBERCULOSIS CONTROL   |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | HTH              | 32.00*              |       | 32.00*              |       |
|  |                    |         |                  | 2,516,597A          |       | 2,516,792A          |       |
|  |                    |         | HTH              | 2.00*               |       | 2.00*               |       |
|  |                    |         |                  | 1,318,876N          |       | 1,318,876N          |       |
| 2. HTH111 - HANSEN'S DISEASE SERVICES  |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | HTH              | 68.00*              |       | 68.00*              |       |
|  |                    |         |                  | 4,707,801A          |       | 4,707,981A          |       |
|  |                    |         | HTH              | 3.00*               |       | 3.00*               |       |
|  |                    |         |                  | 695,669N            |       | 695,669N            |       |
| 3. HTH121 - STD/AIDS PREVENTION SERVICES   |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | HTH              | 15.00*              |       | 15.00*              |       |
|  |                    |         |                  | 5,513,222A          |       | 5,513,384A          |       |
|  |                    |         | HTH              | 4.50*               |       | 4.50*               |       |
|  |                    |         |                  | 5,909,282N          |       | 5,909,282N          |       |
| 4. HTH131 - DISEASE OUTBREAK CONTROL   |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | HTH              | 20.60*              |       | 20.60*              |       |
|  |                    |         |                  | 1,519,422A          |       | 1,519,686A          |       |
|  |                    |         | HTH              | 22.40*              |       | 22.40*              |       |
|  |                    |         |                  | 10,404,041N         |       | 10,404,041N         |       |
| 5. HTH141 - DENTAL DISEASES  |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | HTH              | 25.00*              |       | 25.00*              |       |
|  |                    |         |                  | 1,762,681A          |       | 1,762,976A          |       |
| 6. HTH730 - EMERGENCY MEDICAL SERVICES AND INJURY PREVENTION SYSTEM                        |                    |         |                  |                     |       |                     |       |
|  | OPERATING          |         | HTH              | 14.00*              |       | 14.00*              |       |
|  |                    |         |                  | 42,104,770A         |       | 42,104,910A         |       |
|  |                    |         | HTH              | 5,230,000B          |       | 2,600,000B          |       |
|  |                    |         |                  | 3.00*               |       | 3.00*               |       |
|  |                    |         | HTH              | 3,494,122N          |       | 3,494,122N          |       |

## PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID   | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS      |       |                     |       |
|----------|--|---------|------------------|---------------------|-------|---------------------|-------|
|          |  |         |                  | FISCAL YEAR 2005-06 | M O F | FISCAL YEAR 2006-07 | M O F |
| 7.       | HTH501 - DEVELOPMENTAL DISABILITIES                  |         |                  |                     |       |                     |       |
|          | OPERATING  |         | HTH              | 230.75*             |       | 230.75*             |       |
|          |  |         |                  | 48,692,087A         |       | 50,668,874A         |       |
|          |  |         |                  | 3.00*               |       | 3.00*               |       |
|          |  |         | HTH              | 1,008,662B          |       | 1,008,662B          |       |
|          |  |         | HTH              | 200,000N            |       | N                   |       |
| 8.       | HTH530 - CHILDREN WITH SPECIAL HEALTH NEEDS SERVICES |         |                  |                     |       |                     |       |
|          | OPERATING  |         | HTH              | 120.75*             |       | 120.75*             |       |
|          |  |         |                  | 10,108,534A         |       | 10,109,756A         |       |
|          |  |         |                  | 3.00*               |       | 3.00*               |       |
|          |  |         | HTH              | 1,125,171B          |       | 1,125,171B          |       |
|          |  |         |                  | 41.00*              |       | 41.00*              |       |
|          |  |         | HTH              | 4,309,227N          |       | 4,305,727N          |       |
| 9.       | HTH540 - WOMEN, INFANTS & CHILDREN SERVICES          |         |                  |                     |       |                     |       |
|          | OPERATING  |         | HTH              | 115.50*             |       | 115.50*             |       |
|          |  |         |                  | 29,660,385N         |       | 29,660,385N         |       |
| 10.      | HTH550 - MATERNAL AND CHILD HEALTH SERVICES          |         |                  |                     |       |                     |       |
|          | OPERATING  |         | HTH              | 17.00*              |       | 17.00*              |       |
|          |  |         | HTH              | 17,354,246A         |       | 17,354,422A         |       |
|          |  |         | HTH              | 400,000B            |       | 400,000B            |       |
|          |  |         |                  | 22.50*              |       | 22.50*              |       |
|          |  |         | HTH              | 5,920,144N          |       | 5,920,144N          |       |
|          |  |         |                  | 1.00*               |       | 1.00*               |       |
|          |  |         | HTH              | 758,190U            |       | 758,190U            |       |
| 11.      | HTH180 - CHRONIC DISEASE MANAGEMENT AND CONTROL      |         |                  |                     |       |                     |       |
|          | OPERATING  |         | HTH              | 19.00*              |       | 19.00*              |       |
|          |  |         | HTH              | 1,027,226A          |       | 977,332A            |       |
|          |  |         | HTH              | 18,000B             |       | 18,000B             |       |
|          |  |         |                  | 11.00*              |       | 11.00*              |       |
|          |  |         | HTH              | 3,362,821N          |       | 3,362,821N          |       |
| 12.      | HTH570 - COMMUNITY HEALTH NURSING                    |         |                  |                     |       |                     |       |
|          | OPERATING  |         | HTH              | 449.00*             |       | 451.00*             |       |
|          |  |         | HTH              | 15,856,509A         |       | 15,892,292A         |       |
|          |  |         |                  | 90,720B             |       | 90,720B             |       |
| 13.      | HTH595 - HEALTH RESOURCES ADMINISTRATION             |         |                  |                     |       |                     |       |
|          | OPERATING  |         | HTH              | 28.00*              |       | 28.00*              |       |
|          |  |         |                  | 6,381,797A          |       | 3,645,935A          |       |
|          |  |         |                  | 2.00*               |       | 2.00*               |       |
|          |  |         | HTH              | 47,359,441B         |       | 47,359,441B         |       |
|          |  |         |                  | 7.50*               |       | 7.50*               |       |
|          | INVESTMENT CAPITAL                                   |         | HTH              | 867,373N            |       | 867,373N            |       |
|          |  |         | HTH              | 6,096,000C          |       | C                   |       |
| 14.      | HTH210 - HAWAII HEALTH SYSTEMS CORPORATION           |         |                  |                     |       |                     |       |
|          | OPERATING  |         | HTH              | 32,280,041A         |       | 34,154,041A         |       |
|          |  |         |                  | 2,836.25*           |       | 2,836.25*           |       |
|          |  |         | HTH              | 334,443,937B        |       | 332,569,937B        |       |
|          | INVESTMENT CAPITAL                                   |         | HTH              | 7,390,000C          |       | 1,025,000C          |       |
|          |  |         | HTH              | 22,000,000E         |       | E                   |       |
|          |  |         | HTH              | 18,228,000N         |       | N                   |       |
| 15.      | HTH420 - ADULT MENTAL HEALTH - OUTPATIENT            |         |                  |                     |       |                     |       |
|          | OPERATING  |         | HTH              | 200.50*             |       | 200.50*             |       |
|          |  |         |                  | 61,561,900A         |       | 61,607,425A         |       |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID           | PROGRAM  | EXPENDING AGENCY | APPROPRIATIONS      |       |                     |       |
|----------|--------------------|--|------------------|---------------------|-------|---------------------|-------|
|          |                    |  |                  | FISCAL YEAR 2005-06 | M O F | FISCAL YEAR 2006-07 | M O F |
|          |                    |  | HTH              | 14,652,757B         |       | 14,652,757B         |       |
|          |                    |  | HTH              | 1,643,030N          |       | 1,643,030N          |       |
| 16.      | HTH430             | ADULT MENTAL HEALTH - INPATIENT                      |                  |                     |       |                     |       |
|          | OPERATING          |  | HTH              | 627.50*             |       | 627.50*             |       |
|          | INVESTMENT CAPITAL |  | AGS              | 49,389,054A         |       | 48,934,743A         |       |
|          |                    |  |                  | 55,000C             |       | 410,000C            |       |
| 17.      | HTH440             | ALCOHOL AND DRUG ABUSE                               |                  |                     |       |                     |       |
|          | OPERATING          |  | HTH              | 22.00*              |       | 22.00*              |       |
|          |                    |  | HTH              | 13,470,829A         |       | 18,391,149A         |       |
|          |                    |  | HTH              | 150,000B            |       | 150,000B            |       |
|          |                    |  |                  | 6.00*               |       | 6.00*               |       |
|          |                    |  | HTH              | 10,859,867N         |       | 10,859,867N         |       |
| 18.      | HTH460             | CHILD AND ADOLESCENT MENTAL HEALTH                   |                  |                     |       |                     |       |
|          | OPERATING          |  | HTH              | 163.50*             |       | 163.50*             |       |
|          |                    |  | HTH              | 49,970,774A         |       | 49,973,154A         |       |
|          |                    |  | HTH              | 12,530,867B         |       | 12,530,867B         |       |
|          |                    |  | HTH              | 731,138N            |       | 731,138N            |       |
|          |                    |  | HTH              | 2,250,000U          |       | 2,250,000U          |       |
| 19.      | HTH495             | BEHAVIORAL HEALTH SERVICES ADMINISTRATION            |                  |                     |       |                     |       |
|          | OPERATING          |  | HTH              | 65.00*              |       | 65.00*              |       |
|          |                    |  | HTH              | 7,686,555A          |       | 7,687,133A          |       |
|          |                    |  |                  | 1,504,499N          |       | 1,504,499N          |       |
| 20.      | HTH610             | ENVIRONMENTAL HEALTH SERVICES                        |                  |                     |       |                     |       |
|          | OPERATING          |  | HTH              | 139.00*             |       | 139.00*             |       |
|          |                    |  | HTH              | 6,890,882A          |       | 6,892,270A          |       |
|          |                    |  |                  | 8.00*               |       | 8.00*               |       |
|          |                    |  | HTH              | 944,184B            |       | 944,184B            |       |
|          |                    |  |                  | 7.00*               |       | 7.00*               |       |
|          |                    |  | HTH              | 594,682N            |       | 594,682N            |       |
|          |                    |  |                  | 2.00*               |       | 2.00*               |       |
|          |                    |  | HTH              | 91,259U             |       | 91,259U             |       |
| 21.      | HTH710             | STATE LABORATORY SERVICES                            |                  |                     |       |                     |       |
|          | OPERATING          |  | HTH              | 84.00*              |       | 84.00*              |       |
|          |                    |  |                  | 5,347,308A          |       | 5,348,313A          |       |
| 22.      | HTH720             | MEDICAL FACILITIES - STDS, INSPECTION, AND LICENSING |                  |                     |       |                     |       |
|          | OPERATING          |  | HTH              | 19.20*              |       | 19.20*              |       |
|          |                    |  | HTH              | 1,263,918A          |       | 1,263,985A          |       |
|          |                    |  | HTH              | 356,000B            |       | 356,000B            |       |
|          |                    |  |                  | 17.60*              |       | 17.60*              |       |
|          |                    |  | HTH              | 1,559,994N          |       | 1,559,994N          |       |
| 23.      | HTH906             | COMPREHENSIVE HEALTH PLANNING                        |                  |                     |       |                     |       |
|          | OPERATING          |  | HTH              | 8.00*               |       | 8.00*               |       |
|          |                    |  | HTH              | 494,962A            |       | 495,018A            |       |
|          |                    |  |                  | 39,000B             |       | 39,000B             |       |
| 24.      | HTH760             | HEALTH STATUS MONITORING                             |                  |                     |       |                     |       |
|          | OPERATING          |  | HTH              | 26.00*              |       | 26.00*              |       |
|          |                    |  | HTH              | 1,505,741A          |       | 1,506,102A          |       |
|          |                    |  | HTH              | 250,000B            |       | 250,000B            |       |
|          |                    |  |                  | 2.00*               |       | 2.00*               |       |
|          |                    |  | HTH              | 397,214N            |       | 397,214N            |       |

## PROGRAM APPROPRIATIONS

| ITEM NO.                  | PROG. ID  | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS      |       |                     |       |
|---------------------------|---|---------|------------------|---------------------|-------|---------------------|-------|
|                           |   |         |                  | FISCAL YEAR 2005-06 | M O F | FISCAL YEAR 2006-07 | M O F |
| 25.                       | HTH905 - POLICY DEVELOPMENT AND ADVOCACY FOR DEVELOPMENTAL DISABILITIES |         |                  |                     |       |                     |       |
|                           | OPERATING   |         | HTH              | 1.50*               |       | 1.50*               |       |
|                           |   |         |                  | 99,005A             |       | 99,021A             |       |
|                           |   |         |                  | 6.50*               |       | 6.50*               |       |
|                           |   |         | HTH              | 462,315N            |       | 462,315N            |       |
| 26.                       | HTH907 - GENERAL ADMINISTRATION   |         |                  |                     |       |                     |       |
|                           | OPERATING   |         | HTH              | 118.50*             |       | 118.50*             |       |
|                           |   |         |                  | 7,429,802A          |       | 7,461,892A          |       |
|                           |   |         | HTH              | 1,304,909N          |       | 1,304,909N          |       |
|                           | INVESTMENT CAPITAL  |         | AGS              | 421,000C            |       | 2,854,000C          |       |
| <b>F. SOCIAL SERVICES</b> |   |         |                  |                     |       |                     |       |
| 1.                        | HMS301 - CHILD WELFARE SERVICES   |         |                  |                     |       |                     |       |
|                           | OPERATING   |         | HMS              | 264.44*             |       | 264.44*             |       |
|                           |   |         |                  | 21,057,140A         |       | 21,057,140A         |       |
|                           |   |         | HMS              | 450,000B            |       | 450,000B            |       |
|                           |   |         |                  | 187.06*             |       | 187.06*             |       |
|                           |   |         | HMS              | 26,690,319N         |       | 26,690,319N         |       |
| 2.                        | HMS302 - CHILD CARE SERVICES  |         |                  |                     |       |                     |       |
|                           | OPERATING   |         | HMS              | 23.00*              |       | 23.00*              |       |
|                           |   |         |                  | 1,123,902A          |       | 1,155,792A          |       |
|                           |   |         |                  | 1.00*               |       | 1.00*               |       |
|                           |   |         | HMS              | 5,646,971N          |       | 5,646,971N          |       |
| 3.                        | HMS303 - CHILD PLACEMENT BOARD AND RELATED CLIENT PAYMENTS              |         |                  |                     |       |                     |       |
|                           | OPERATING   |         | HMS              | 39,908,053A         |       | 44,816,013A         |       |
|                           |   |         | HMS              | 17,986,470N         |       | 20,095,666N         |       |
| 4.                        | HMS305 - CHILD CARE PAYMENTS  |         |                  |                     |       |                     |       |
|                           | OPERATING   |         | HMS              | 22,411,811A         |       | 22,411,811A         |       |
|                           |   |         | HMS              | 39,531,967N         |       | 39,531,967N         |       |
| 5.                        | HMS501 - YOUTH SERVICES ADMINISTRATION                                  |         |                  |                     |       |                     |       |
|                           | OPERATING   |         | HMS              | 21.00*              |       | 21.00*              |       |
|                           |   |         |                  | 1,173,259A          |       | 1,186,087A          |       |
|                           |   |         | HMS              | 4,484,811N          |       | 4,484,811N          |       |
|                           | INVESTMENT CAPITAL  |         | HMS              | 200,000C            |       | C                   |       |
| 6.                        | HMS502 - YOUTH SERVICES PROGRAM   |         |                  |                     |       |                     |       |
|                           | OPERATING   |         | HMS              | 3,632,308A          |       | 3,532,308A          |       |
|                           |   |         | HMS              | 1,309,342N          |       | 1,309,342N          |       |
|                           | INVESTMENT CAPITAL  |         | HMS              | 500,000C            |       | C                   |       |
| 7.                        | HMS503 - YOUTH RESIDENTIAL PROGRAMS                                     |         |                  |                     |       |                     |       |
|                           | OPERATING   |         | HMS              | 88.50*              |       | 88.50*              |       |
|                           |   |         |                  | 6,278,187A          |       | 6,514,961A          |       |
|                           |   |         | HMS              | 1,463,704N          |       | 1,463,704N          |       |
|                           |   |         |                  | .50*                |       | .50*                |       |
|                           |   |         | HMS              | 16,540U             |       | 16,540U             |       |
|                           | INVESTMENT CAPITAL  |         | HMS              | 100,000C            |       | C                   |       |
| 8.                        | DEF112 - SERVICES TO VETERANS   |         |                  |                     |       |                     |       |
|                           | OPERATING   |         | DEF              | 24.00*              |       | 24.00*              |       |
|                           |   |         |                  | 1,414,201A          |       | 1,164,201A          |       |
|                           | INVESTMENT CAPITAL  |         | AGS              | 2,064,000C          |       | C                   |       |
|                           |   |         | DEF              | 1,350,000C          |       | C                   |       |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID  | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS      |       |                     |       |
|----------|---|---------|------------------|---------------------|-------|---------------------|-------|
|          |   |         |                  | FISCAL YEAR 2005-06 | M O F | FISCAL YEAR 2006-07 | M O F |
| 9.       | HMS601 - ADULT AND COMMUNITY CARE SERVICES BRANCH         |         |                  |                     |       |                     |       |
|          | OPERATING   |         | HMS              | 99.58*              |       | 99.58*              |       |
|          |   |         |                  | 9,233,205A          |       | 9,245,214A          |       |
|          |   |         |                  | 17.92*              |       | 17.92*              |       |
|          |   |         | HMS              | 5,393,860N          |       | 5,393,860N          |       |
|          |   |         | HMS              | 10,000R             |       | 10,000R             |       |
|          |   |         | HMS              | 280,106U            |       | 280,106U            |       |
|          | INVESTMENT CAPITAL  |         | HMS              | 500,000C            |       |                     | C     |
| 10.      | HMS201 - TEMPORARY ASSISTANCE TO NEEDY FAMILIES           |         |                  |                     |       |                     |       |
|          | OPERATING   |         | HMS              | 11,145,517A         |       | 11,145,517A         |       |
|          |   |         | HMS              | 50,220,369N         |       | 50,220,369N         |       |
| 11.      | HMS202 - PAYMENTS TO ASSIST THE AGED, BLIND, AND DISABLED |         |                  |                     |       |                     |       |
|          | OPERATING   |         | HMS              | 6,850,560A          |       | 6,850,560A          |       |
| 12.      | HMS204 - GENERAL ASSISTANCE PAYMENTS                      |         |                  |                     |       |                     |       |
|          | OPERATING   |         | HMS              | 18,764,891A         |       | 18,764,891A         |       |
| 13.      | HMS206 - FEDERAL ASSISTANCE PAYMENTS                      |         |                  |                     |       |                     |       |
|          | OPERATING   |         | HMS              | 2,035,806N          |       | 2,035,806N          |       |
| 14.      | HMS203 - TEMPORARY ASSISTANCE TO OTHER NEEDY FAMILIES     |         |                  |                     |       |                     |       |
|          | OPERATING   |         | HMS              | 31,164,660A         |       | 31,164,660A         |       |
| 15.      | HMS220 - RENTAL HOUSING SERVICES                          |         |                  |                     |       |                     |       |
|          | OPERATING   |         | HMS              | 584,556A            |       | 584,556A            |       |
|          |   |         |                  | 198.00*             |       | 198.00*             |       |
|          |   |         | HMS              | 43,372,325N         |       | 43,457,921N         |       |
|          |   |         |                  | 23.00*              |       | 23.00*              |       |
|          |   |         | HMS              | 3,899,185W          |       | 3,899,185W          |       |
|          | INVESTMENT CAPITAL  |         | HMS              | 3,500,000C          |       | 2,000,000C          |       |
| 16.      | HMS807 - TEACHER HOUSING                                  |         |                  |                     |       |                     |       |
|          | OPERATING   |         | HMS              | 360,917W            |       | 360,917W            |       |
| 17.      | HMS229 - HCDCH ADMINISTRATION                             |         |                  |                     |       |                     |       |
|          | OPERATING   |         | HMS              | 29.00*              |       | 29.00*              |       |
|          |   |         |                  | 10,705,025N         |       | 10,793,606N         |       |
|          |   |         |                  | 20.00*              |       | 20.00*              |       |
|          |   |         | HMS              | 2,896,234W          |       | 2,896,234W          |       |
|          | INVESTMENT CAPITAL  |         | HMS              | 3,000,000C          |       | 2,000,000C          |       |
| 18.      | HMS225 - PRIVATE HOUSING DEVELOPMENT & OWNERSHIP          |         |                  |                     |       |                     |       |
|          | OPERATING   |         | HMS              | 10.00*              |       | 10.00*              |       |
|          |   |         |                  | 1,594,370N          |       | 1,594,370N          |       |
|          |   |         |                  | 8.00*               |       | 8.00*               |       |
|          |   |         | HMS              | 6,962,849W          |       | 6,962,849W          |       |
| 19.      | HMS223 - BROADENED HOMESITE OWNERSHIP                     |         |                  |                     |       |                     |       |
|          | OPERATING   |         | HMS              | 211,473W            |       | 211,473W            |       |
| 20.      | HMS227 - HOUSING FINANCE                                  |         |                  |                     |       |                     |       |
|          | OPERATING   |         | HMS              | 3,000,000N          |       | 3,000,000N          |       |
|          |   |         |                  | 11.00*              |       | 11.00*              |       |
|          |   |         | HMS              | 1,484,511W          |       | 1,484,511W          |       |
| 21.      | HMS222 - RENTAL ASSISTANCE SERVICES                       |         |                  |                     |       |                     |       |
|          | OPERATING   |         | HMS              | 5.25*               |       | 5.25*               |       |
|          |   |         |                  | 1,236,941A          |       | 1,236,941A          |       |



## PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID           | PROGRAM   | EXPENDING AGENCY | APPROPRIATIONS      |        |                     |        |
|----------|--------------------|---|------------------|---------------------|--------|---------------------|--------|
|          |                    |   |                  | FISCAL YEAR 2005-06 | M O F  | FISCAL YEAR 2006-07 | M O F  |
|          |                    |   | HMS              |                     | 11.75* |                     | 11.75* |
|          |                    |   |                  | 25,577,240N         |        | 25,577,240N         |        |
| 22.      | HMS224             | HOMELESS SERVICES   |                  |                     |        |                     |        |
|          | OPERATING          |   | HMS              | 4.00*               |        | 4.00*               |        |
|          |                    |   | HMS              | 6,566,670A          |        | 6,566,670A          |        |
|          | INVESTMENT CAPITAL |   | HMS              | 1,369,108N          |        | 1,369,108N          | C      |
|          |                    |   |                  | 500,000C            |        |                     |        |
| 23.      | HMS231             | RENTAL HOUSING TRUST FUND                                 |                  |                     |        |                     |        |
|          | OPERATING          |   | HMS              | 19,008,563T         |        | 19,008,563T         |        |
| 24.      | HMS230             | HEALTH CARE PAYMENTS                                      |                  |                     |        |                     |        |
|          | OPERATING          |   | HMS              | 240,191,626A        |        | 240,301,007A        |        |
|          |                    |   | HMS              | 368,877,940N        |        | 355,972,425N        |        |
|          |                    |   | HMS              | 10,341,215U         |        | 10,341,215U         |        |
| 25.      | HMS603             | HOME AND COMMUNITY BASED CARE SERVICES                    |                  |                     |        |                     |        |
|          | OPERATING          |   | HMS              | 17,916,194A         |        | 18,510,263A         |        |
|          |                    |   | HMS              | 66,191,306N         |        | 68,696,463N         |        |
|          |                    |   | HMS              | 32,793,013U         |        | 34,068,348U         |        |
| 26.      | HMS245             | QUEST HEALTH CARE PAYMENTS                                |                  |                     |        |                     |        |
|          | OPERATING          |   | HMS              | 150,853,551A        |        | 158,728,070A        |        |
|          |                    |   | HMS              | 214,934,945N        |        | 229,772,055N        |        |
| 27.      | HMS236             | ELIGIBILITY DETERMINATION AND EMPLOYMENT RELATED SERVICES |                  |                     |        |                     |        |
|          | OPERATING          |   | HMS              | 328.86*             |        | 328.86*             |        |
|          |                    |   | HMS              | 12,903,771A         |        | 13,268,235A         |        |
|          |                    |   | HMS              | 255.14*             |        | 255.14*             |        |
|          |                    |   | HMS              | 15,525,799N         |        | 15,525,799N         |        |
| 28.      | HMS238             | DISABILITY DETERMINATION                                  |                  |                     |        |                     |        |
|          | OPERATING          |   | HMS              | 45.00*              |        | 45.00*              |        |
|          |                    |   | HMS              | 5,218,275N          |        | 5,218,275N          |        |
| 29.      | ATG500             | CHILD SUPPORT ENFORCEMENT SERVICES                        |                  |                     |        |                     |        |
|          | OPERATING          |   | ATG              | 57.46*              |        | 57.46*              |        |
|          |                    |   | ATG              | 2,217,344A          |        | 2,217,164A          |        |
|          |                    |   | ATG              | 138.60*             |        | 138.60*             |        |
|          |                    |   | ATG              | 14,820,203N         |        | 14,819,853N         |        |
|          |                    |   | ATG              | 13.94*              |        | 13.94*              |        |
|          |                    |   | ATG              | 2,742,353T          |        | 2,742,353T          |        |
| 30.      | HMS237             | EMPLOYMENT AND TRAINING                                   |                  |                     |        |                     |        |
|          | OPERATING          |   | HMS              | 491,214A            |        | 491,214A            |        |
|          |                    |   | HMS              | 1,197,541N          |        | 1,197,541N          |        |
| 31.      | HHL602             | PLANNING AND DEVELOPMENT FOR HAWAIIAN HOMESTEADS          |                  |                     |        |                     |        |
|          | OPERATING          |   | HHL              | 14.00*              |        | 14.00*              |        |
|          |                    |   | HHL              | 601,791A            |        | 601,791A            |        |
|          |                    |   | HHL              | 66.00*              |        | 66.00*              |        |
|          |                    |   | HHL              | 4,639,793B          |        | 4,639,793B          |        |
|          |                    |   | HHL              | 51.00*              |        | 51.00*              |        |
|          | INVESTMENT CAPITAL |   | HHL              | 3,084,984T          |        | 3,084,984T          |        |
|          |                    |   | HHL              | 2,300,000C          |        |                     | C      |

PROGRAM APPROPRIATIONS

| ITEM NO.                   | PROG. ID   | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS      |       |                     |       |
|----------------------------|--|---------|------------------|---------------------|-------|---------------------|-------|
|                            |  |         |                  | FISCAL YEAR 2005-06 | M O F | FISCAL YEAR 2006-07 | M O F |
| 32.                        | HHL625 - MANAGEMENT & GEN SUPPORT FOR HAWAIIAN HOMESTEADS  |         |                  |                     |       |                     |       |
|                            | OPERATING  |         | HHL              | 4.00*               |       | 4.00*               |       |
|                            |  |         |                  | 215,768A            |       | 215,768A            |       |
|                            |  |         |                  | 34.00*              |       | 34.00*              |       |
|                            |  |         | HHL              | 3,672,486B          |       | 3,672,486B          |       |
|                            |  |         |                  | 26.00*              |       | 26.00*              |       |
|                            |  |         | HHL              | 1,636,888T          |       | 1,636,888T          |       |
| 33.                        | HMS605 - COMMUNITY-BASED RESIDENTIAL SUPPORT   |         |                  |                     |       |                     |       |
|                            | OPERATING  |         | HMS              | 14,394,149A         |       | 14,969,915A         |       |
| 34.                        | HTH904 - EXECUTIVE OFFICE ON AGING   |         |                  |                     |       |                     |       |
|                            | OPERATING  |         | HTH              | 3.55*               |       | 3.55*               |       |
|                            |  |         |                  | 6,146,597A          |       | 6,146,625A          |       |
|                            |  |         |                  | 7.45*               |       | 7.45*               |       |
|                            | INVESTMENT CAPITAL   |         | HTH              | 7,141,320N          |       | 7,141,320N          |       |
|                            |  |         | HTH              | 700,000C            |       |                     | C     |
| 35.                        | HTH520 - PROGRAM DEVELOPMENT, COORDINATION OF SERVICES, AND ACCESS FOR PERSONS WITH DISABILITIES |         |                  |                     |       |                     |       |
|                            | OPERATING  |         | HTH              | 5.00*               |       | 5.00*               |       |
|                            |  |         |                  | 966,434A            |       | 966,604A            |       |
|                            |  |         | HTH              | 10,000B             |       | 10,000B             |       |
| 36.                        | HMS902 - GENERAL SUPPORT FOR HEALTH CARE PAYMENTS  |         |                  |                     |       |                     |       |
|                            | OPERATING  |         | HMS              | 102.49*             |       | 102.49*             |       |
|                            |  |         |                  | 8,877,550A          |       | 8,999,708A          |       |
|                            |  |         |                  | 104.51*             |       | 104.51*             |       |
|                            |  |         | HMS              | 16,724,781N         |       | 16,724,781N         |       |
| 37.                        | HMS903 - GENERAL SUPPORT FOR BENEFITS, EMPLOYMENT, AND SUPPORT SERVICES                          |         |                  |                     |       |                     |       |
|                            | OPERATING  |         | HMS              | 59.96*              |       | 59.96*              |       |
|                            |  |         |                  | 10,160,813A         |       | 10,217,725A         |       |
|                            |  |         |                  | 50.04*              |       | 50.04*              |       |
|                            |  |         | HMS              | 27,312,576N         |       | 27,312,576N         |       |
| 38.                        | HMS904 - GENERAL ADMINISTRATION  |         |                  |                     |       |                     |       |
|                            | OPERATING  |         | HMS              | 173.34*             |       | 173.34*             |       |
|                            |  |         |                  | 8,206,608A          |       | 8,206,608A          |       |
|                            |  |         |                  | 15.66*              |       | 15.66*              |       |
|                            |  |         | HMS              | 1,465,198N          |       | 1,465,198N          |       |
| 39.                        | HMS901 - GENERAL SUPPORT FOR SOCIAL SERVICES   |         |                  |                     |       |                     |       |
|                            | OPERATING  |         | HMS              | 27.56*              |       | 27.56*              |       |
|                            |  |         |                  | 1,657,030A          |       | 1,682,578A          |       |
|                            |  |         |                  | 19.44*              |       | 19.44*              |       |
|                            | INVESTMENT CAPITAL   |         | HMS              | 1,591,777N          |       | 1,591,777N          |       |
|                            |  |         | HMS              | 1,000,000C          |       |                     | C     |
| <b>G. FORMAL EDUCATION</b> |  |         |                  |                     |       |                     |       |
| 1.                         | EDN100 - SCHOOL-BASED BUDGETING  |         |                  |                     |       |                     |       |
|                            | OPERATING  |         | EDN              | 11,611.00*          |       | 11,619.00*          |       |
|                            |  |         |                  | 1,207,587,227A      |       | 1,249,534,985A      |       |
|                            |  |         | EDN              | 5,372,924B          |       | 5,372,924B          |       |
|                            |  |         | EDN              | 144,301,896N        |       | 165,509,732N        |       |
|                            |  |         | EDN              | 5,950,000T          |       | 5,950,000T          |       |
|                            |  |         | EDN              | 2,000,000U          |       | 2,000,000U          |       |
|                            |  |         | EDN              | 3,400,000W          |       | 3,398,000W          |       |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID | PROGRAM  | EXPENDING AGENCY | APPROPRIATIONS      |       |                     |       |
|----------|----------|--|------------------|---------------------|-------|---------------------|-------|
|          |          |  |                  | FISCAL YEAR 2005-06 | M O F | FISCAL YEAR 2006-07 | M O F |
|          |          | INVESTMENT CAPITAL                                       | EDN              | 212,114,000B        |       | 62,400,000B         |       |
|          |          |  | EDN              | 500,000R            |       |                     | R     |
| 2.       |          | EDN150 - COMPREHENSIVE SCHOOL SUPPORT SERVICES           |                  |                     |       |                     |       |
|          |          | OPERATING  | EDN              | 4,989.00*           |       | 4,996.00*           |       |
|          |          |  |                  | 306,689,072A        |       | 306,902,364A        |       |
|          |          |  |                  | 2.00*               |       | 2.00*               |       |
|          |          |  | EDN              | 46,249,630N         |       | 49,653,056N         |       |
| 3.       |          | EDN200 - INSTRUCTIONAL SUPPORT                           |                  |                     |       |                     |       |
|          |          | OPERATING  | EDN              | 230.00*             |       | 230.00*             |       |
|          |          |  |                  | 27,027,762A         |       | 27,027,762A         |       |
|          |          |  |                  | 2.00*               |       | 2.00*               |       |
|          |          |  | EDN              | 1,600,000B          |       | 1,600,000B          |       |
|          |          |  | EDN              | 1,720,000N          |       | 1,720,000N          |       |
|          |          |  | EDN              | 800,000U            |       | 800,000U            |       |
| 4.       |          | EDN300 - STATE AND DISTRICT ADMINISTRATION               |                  |                     |       |                     |       |
|          |          | OPERATING  | EDN              | 425.00*             |       | 425.00*             |       |
|          |          |  |                  | 32,399,578A         |       | 32,399,578A         |       |
|          |          |  | EDN              | 590,000N            |       | 590,000N            |       |
| 5.       |          | EDN400 - SCHOOL SUPPORT                                  |                  |                     |       |                     |       |
|          |          | OPERATING  | EDN              | 1,749.10*           |       | 1,774.60*           |       |
|          |          |  |                  | 148,651,458A        |       | 149,718,350A        |       |
|          |          |  |                  | 726.50*             |       | 726.50*             |       |
|          |          |  | EDN              | 22,810,599B         |       | 23,112,819B         |       |
|          |          |  |                  | 3.00*               |       | 3.00*               |       |
|          |          |  | EDN              | 34,533,485N         |       | 35,040,145N         |       |
|          |          |  | EDN              | 2,000,000W          |       | 2,000,000W          |       |
|          |          | INVESTMENT CAPITAL                                       | EDN              | 2,959,000C          |       | 2,959,000C          |       |
| 6.       |          | EDN500 - SCHOOL COMMUNITY SERVICE                        |                  |                     |       |                     |       |
|          |          | OPERATING  | EDN              | 35.50*              |       | 35.50*              |       |
|          |          |  | EDN              | 10,593,211A         |       | 10,593,211A         |       |
|          |          |  | EDN              | 1,939,006B          |       | 1,939,006B          |       |
|          |          |  | EDN              | 3,260,007N          |       | 3,260,007N          |       |
|          |          |  | EDN              | 7,500,000U          |       | 8,000,000U          |       |
|          |          |  | EDN              | 7,530,000W          |       | 7,530,000W          |       |
| 7.       |          | EDN600 - CHARTER SCHOOLS                                 |                  |                     |       |                     |       |
|          |          | OPERATING  | EDN              | 30,796,584A         |       | 30,796,584A         |       |
| 8.       |          | AGS807 - PHYSICAL PLANT OPERATIONS AND MAINTENANCE - AGS |                  |                     |       |                     |       |
|          |          | OPERATING  | AGS              | 85.00*              |       | 85.00*              |       |
|          |          |  | AGS              | 4,453,524A          |       | 4,453,524A          |       |
|          |          |  | AGS              | 1,000,000U          |       | 1,000,000U          |       |
| 9.       |          | EDN407 - PUBLIC LIBRARIES                                |                  |                     |       |                     |       |
|          |          | OPERATING  | EDN              | 553.55*             |       | 553.55*             |       |
|          |          |  | EDN              | 26,120,761A         |       | 26,120,761A         |       |
|          |          |  | EDN              | 3,125,000B          |       | 3,125,000B          |       |
|          |          |  | EDN              | 1,365,244N          |       | 1,365,244N          |       |
|          |          | INVESTMENT CAPITAL                                       | AGS              | 17,760,000C         |       | 2,000,000C          |       |
| 10.      |          | DEF114 - HAWAII NATIONAL GUARD YOUTH CHALLENGE ACADEMY   |                  |                     |       |                     |       |
|          |          | OPERATING  | DEF              | 1,119,970A          |       | 1,119,970A          |       |
|          |          |  | DEF              | 1,680,000N          |       | 1,680,000N          |       |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID   | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS      |       |                     |       |
|----------|--|---------|------------------|---------------------|-------|---------------------|-------|
|          |  |         |                  | FISCAL YEAR 2005-06 | M O F | FISCAL YEAR 2006-07 | M O F |
| 11.      | UOH100 - UNIVERSITY OF HAWAII, MANOA               |         |                  |                     |       |                     |       |
|          | OPERATING  |         | UOH              | 3,310.34*           |       | 3,310.34*           |       |
|          |  |         | UOH              | 222,737,245A        |       | 191,974,693A        |       |
|          |  |         | UOH              | 79.75*              |       | 79.75*              |       |
|          |  |         | UOH              | 76,979,097B         |       | 85,442,652B         |       |
|          |  |         | UOH              | 78.06*              |       | 78.06*              |       |
|          |  |         | UOH              | 5,484,229N          |       | 5,484,229N          |       |
|          |  |         | UOH              | 302.75*             |       | 302.75*             |       |
|          | INVESTMENT CAPITAL                                 |         | UOH              | 144,986,769W        |       | 144,754,305W        |       |
|          |  |         | UOH              | 27,826,000C         |       | C                   |       |
|          |  |         | UOH              | 31,000,000E         |       | E                   |       |
|          |  |         | UOH              | 12,000,000W         |       | W                   |       |
| 12.      | UOH210 - UNIVERSITY OF HAWAII, HILO                |         |                  |                     |       |                     |       |
|          | OPERATING  |         | UOH              | 389.25*             |       | 392.25*             |       |
|          |  |         | UOH              | 21,920,835A         |       | 22,390,932A         |       |
|          |  |         | UOH              | 14.00*              |       | 14.00*              |       |
|          |  |         | UOH              | 9,440,557B          |       | 10,440,557B         |       |
|          |  |         | UOH              | 394,543N            |       | 394,543N            |       |
|          |  |         | UOH              | 11.50*              |       | 11.50*              |       |
|          | INVESTMENT CAPITAL                                 |         | UOH              | 5,084,938W          |       | 5,084,938W          |       |
|          |  |         | UOH              | 22,600,000C         |       | C                   |       |
| 13.      | UOH220 - SMALL BUSINESS DEVELOPMENT                |         |                  |                     |       |                     |       |
|          | OPERATING  |         | UOH              |                     |       |                     |       |
|          |  |         | UOH              | 637,167A            |       | 637,167A            |       |
| 14.      | UOH700 - UNIVERSITY OF HAWAII, WEST OAHU           |         |                  |                     |       |                     |       |
|          | OPERATING  |         | UOH              | 54.50*              |       | 56.50*              |       |
|          |  |         | UOH              | 2,682,442A          |       | 2,774,494A          |       |
|          |  |         | UOH              | 1,985,000B          |       | 1,985,000B          |       |
|          |  |         | UOH              | 7,000N              |       | 7,000N              |       |
|          | INVESTMENT CAPITAL                                 |         | UOH              | 125,000W            |       | 125,000W            |       |
|          |  |         | UOH              | 500,000C            |       | C                   |       |
| 15.      | UOH800 - UNIVERSITY OF HAWAII, COMMUNITY COLLEGES  |         |                  |                     |       |                     |       |
|          | OPERATING  |         | UOH              | 1,579.25*           |       | 1,591.25*           |       |
|          |  |         | UOH              | 78,402,061A         |       | 79,367,308A         |       |
|          |  |         | UOH              | 77.50*              |       | 77.50*              |       |
|          |  |         | UOH              | 43,684,229B         |       | 43,684,229B         |       |
|          |  |         | UOH              | 15.60*              |       | 15.60*              |       |
|          |  |         | UOH              | 3,540,927N          |       | 3,540,927N          |       |
|          |  |         | UOH              | 4.50*               |       | 4.50*               |       |
|          | INVESTMENT CAPITAL                                 |         | UOH              | 4,848,882W          |       | 4,848,882W          |       |
|          |  |         | UOH              | 27,115,000C         |       | 11,257,000C         |       |
|          |  |         | UOH              | 3,003,000N          |       | N                   |       |
|          |  |         | UOH              | 14,003,000R         |       | R                   |       |
| 16.      | UOH900 - UNIVERSITY OF HAWAII, SYSTEM WIDE SUPPORT |         |                  |                     |       |                     |       |
|          | OPERATING  |         | UOH              | 329.50*             |       | 329.50*             |       |
|          |  |         | UOH              | 264,527,756A        |       | 290,891,632A        |       |
|          |  |         | UOH              | 4.00*               |       | 4.00*               |       |
|          |  |         | UOH              | 8,857,472B          |       | 11,101,868B         |       |
|          |  |         | UOH              | 4.00*               |       | 4.00*               |       |
|          |  |         | UOH              | 659,031N            |       | 659,031N            |       |
|          |  |         | UOH              | 5.00*               |       | 5.00*               |       |
|          | INVESTMENT CAPITAL                                 |         | UOH              | 14,087,414W         |       | 14,104,478W         |       |
|          |  |         | UOH              | 50,742,000C         |       | 27,531,000C         |       |

## PROGRAM APPROPRIATIONS

| ITEM NO.                         | PROG. ID  | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS      |       |                     |       |
|----------------------------------|---|---------|------------------|---------------------|-------|---------------------|-------|
|                                  |   |         |                  | FISCAL YEAR 2005-06 | M O F | FISCAL YEAR 2006-07 | M O F |
| <b>H. CULTURE AND RECREATION</b> |   |         |                  |                     |       |                     |       |
| 1.                               | UOH881 - UNIVERSITY OF HAWAII, AQUARIA              |         |                  |                     |       |                     |       |
|                                  | OPERATING   |         | UOH              | 13.00*              |       | 13.00*              |       |
|                                  |   |         |                  | 541,327A            |       | 541,327A            |       |
|                                  |   |         |                  | 7.00*               |       | 7.00*               |       |
|                                  |   |         | UOH              | 1,718,689B          |       | 1,718,689B          |       |
|                                  |   |         | UOH              | 1,000,000W          |       | 1,000,000W          |       |
| 2.                               | AGS881 - PERFORMING AND VISUAL ARTS EVENTS          |         |                  |                     |       |                     |       |
|                                  | OPERATING   |         | AGS              | 10.00*              |       | 10.00*              |       |
|                                  |   |         |                  | 2,447,544A          |       | 2,247,544A          |       |
|                                  |   |         |                  | 12.00*              |       | 12.00*              |       |
|                                  |   |         | AGS              | 4,178,568B          |       | 4,178,568B          |       |
|                                  |   |         |                  | 1.00*               |       | 1.00*               |       |
|                                  | INVESTMENT CAPITAL                                  |         | AGS              | 753,158N            |       | 753,158N            |       |
|                                  |   |         | AGS              | 750,000C            |       |                     | C     |
| 3.                               | AGS818 - ETHNIC GROUP PRESENTATIONS                 |         |                  |                     |       |                     |       |
|                                  | OPERATING   |         | AGS              | 36,000A             |       | 36,000A             |       |
| 4.                               | LNR802 - HISTORIC PRESERVATION                      |         |                  |                     |       |                     |       |
|                                  | OPERATING   |         | LNR              | 13.00*              |       | 13.00*              |       |
|                                  |   |         | LNR              | 946,445A            |       | 846,445A            |       |
|                                  |   |         | LNR              | 135,265B            |       | 135,265B            |       |
|                                  |   |         | LNR              | 488,553N            |       | 488,553N            |       |
| 5.                               | LNR804 - FOREST RECREATION                          |         |                  |                     |       |                     |       |
|                                  | OPERATING   |         | LNR              | 33.00*              |       | 33.00*              |       |
|                                  |   |         |                  | 1,348,445A          |       | 1,348,445A          |       |
|                                  |   |         |                  | 3.50*               |       | 3.50*               |       |
|                                  |   |         | LNR              | 534,184B            |       | 534,184B            |       |
|                                  |   |         |                  | 3.50*               |       | 3.50*               |       |
|                                  |   |         | LNR              | 532,994N            |       | 532,994N            |       |
|                                  |   |         | LNR              | 564,785W            |       | 564,785W            |       |
| 6.                               | LNR805 - RECREATIONAL FISHERIES                     |         |                  |                     |       |                     |       |
|                                  | OPERATING   |         | LNR              | 7.00*               |       | 7.00*               |       |
|                                  |   |         | LNR              | 238,640A            |       | 238,640A            |       |
|                                  |   |         | LNR              | 68,000B             |       | 68,000B             |       |
|                                  |   |         | LNR              | 431,013N            |       | 431,013N            |       |
| 7.                               | LNR806 - PARKS ADMINISTRATION AND OPERATION         |         |                  |                     |       |                     |       |
|                                  | OPERATING   |         | LNR              | 90.00*              |       | 90.00*              |       |
|                                  |   |         | LNR              | 4,907,328A          |       | 4,907,328A          |       |
|                                  |   |         | LNR              | 584,164B            |       | 584,164B            |       |
|                                  |   |         | LNR              | 285,201N            |       | 285,201N            |       |
|                                  | INVESTMENT CAPITAL                                  |         | LNR              | 4,710,000C          |       | 2,000,000C          |       |
| 8.                               | LNR801 - OCEAN-BASED RECREATION                     |         |                  |                     |       |                     |       |
|                                  | OPERATING   |         | LNR              | 90.00*              |       | 90.00*              |       |
|                                  |   |         | LNR              | 15,371,690B         |       | 15,453,249B         |       |
|                                  |   |         | LNR              | 700,000N            |       | 700,000N            |       |
|                                  | INVESTMENT CAPITAL                                  |         | LNR              | 9,530,000C          |       |                     | C     |
|                                  |   |         | LNR              | 5,000,000D          |       |                     | D     |
|                                  |   |         | LNR              | 11,520,000N         |       |                     | N     |
| 9.                               | AGS889 - SPECTATOR EVENTS AND SHOWS - ALOHA STADIUM |         |                  |                     |       |                     |       |
|                                  | OPERATING   |         | AGS              | 39.50*              |       | 39.50*              |       |
|                                  |   |         |                  | 7,560,979B          |       | 6,935,979B          |       |

PROGRAM APPROPRIATIONS

| ITEM NO.                | PROG. ID | PROGRAM                               | EXPENDING AGENCY | APPROPRIATIONS      |       |                     |       |
|-------------------------|----------|---------------------------------------|------------------|---------------------|-------|---------------------|-------|
|                         |          |                                       |                  | FISCAL YEAR 2005-06 | M O F | FISCAL YEAR 2006-07 | M O F |
|                         |          | INVESTMENT CAPITAL                    | AGS              | 425,000B            |       | 75,000B             |       |
|                         |          |                                       | AGS              | 1,185,000C          |       | 65,000C             |       |
| 10.                     | LNR807   | PARK INTERPRETATION                   |                  | 15.00*              |       | 15.00*              |       |
|                         |          | OPERATING                             | LNR              | 3,206,325B          |       | 3,226,009B          |       |
| <b>I. PUBLIC SAFETY</b> |          |                                       |                  |                     |       |                     |       |
| 1.                      | PSD402   | HALAWA CORRECTIONAL FACILITY          |                  | 403.00*             |       | 403.00*             |       |
|                         |          | OPERATING                             | PSD              | 19,446,828A         |       | 19,446,828A         |       |
|                         |          |                                       | PSD              | 58,336W             |       | 58,336W             |       |
|                         |          | INVESTMENT CAPITAL                    | AGS              | 882,000C            |       |                     | C     |
| 2.                      | PSD403   | KULANI CORRECTIONAL FACILITY          |                  | 77.00*              |       | 77.00*              |       |
|                         |          | OPERATING                             | PSD              | 4,285,331A          |       | 4,285,331A          |       |
| 3.                      | PSD404   | WAIAWA CORRECTIONAL FACILITY          |                  | 108.00*             |       | 108.00*             |       |
|                         |          | OPERATING                             | PSD              | 4,717,997A          |       | 4,717,997A          |       |
|                         |          |                                       | PSD              | 15,000W             |       | 15,000W             |       |
| 4.                      | PSD405   | HAWAII COMMUNITY CORRECTIONAL CENTER  |                  | 152.00*             |       | 152.00*             |       |
|                         |          | OPERATING                             | PSD              | 6,020,018A          |       | 6,020,018A          |       |
| 5.                      | PSD406   | MAUI COMMUNITY CORRECTIONAL CENTER    |                  | 187.00*             |       | 187.00*             |       |
|                         |          | OPERATING                             | PSD              | 7,346,703A          |       | 7,346,703A          |       |
|                         |          |                                       | PSD              | 200,000S            |       | 200,000S            |       |
| 6.                      | PSD407   | OAHU COMMUNITY CORRECTIONAL CENTER    |                  | 483.00*             |       | 483.00*             |       |
|                         |          | OPERATING                             | PSD              | 23,403,362A         |       | 23,388,362A         |       |
|                         |          |                                       | PSD              | 30,000W             |       | 30,000W             |       |
| 7.                      | PSD408   | KAUAI COMMUNITY CORRECTIONAL CENTER   |                  | 68.00*              |       | 68.00*              |       |
|                         |          | OPERATING                             | PSD              | 2,956,652A          |       | 2,956,652A          |       |
| 8.                      | PSD409   | WOMEN'S COMMUNITY CORRECTIONAL CENTER |                  | 134.00*             |       | 134.00*             |       |
|                         |          | OPERATING                             | PSD              | 5,676,028A          |       | 5,676,028A          |       |
| 9.                      | PSD410   | INTAKE SERVICE CENTERS                |                  | 53.00*              |       | 53.00*              |       |
|                         |          | OPERATING                             | PSD              | 2,554,359A          |       | 2,524,359A          |       |
| 10.                     | PSD420   | CORRECTION PROGRAM SERVICES           |                  | 180.50*             |       | 180.50*             |       |
|                         |          | OPERATING                             | PSD              | 16,667,989A         |       | 16,667,989A         |       |
| 11.                     | PSD421   | HEALTH CARE                           |                  | 147.60*             |       | 147.60*             |       |
|                         |          | OPERATING                             | PSD              | 13,809,955A         |       | 13,809,955A         |       |
| 12.                     | PSD502   | NARCOTICS ENFORCEMENT                 |                  | 11.00*              |       | 11.00*              |       |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID           | PROGRAM   | EXPENDING AGENCY | APPROPRIATIONS      |       |                     |       |
|----------|--------------------|---|------------------|---------------------|-------|---------------------|-------|
|          |                    |   |                  | FISCAL YEAR 2005-06 | M O F | FISCAL YEAR 2006-07 | M O F |
|          | OPERATING          |   | PSD              | 737,836A            |       | 739,970A            |       |
|          |                    |   |                  | 6.00*               |       | 6.00*               |       |
|          |                    |   | PSD              | 528,375W            |       | 458,375W            |       |
| 13.      | PSD503             | - SHERIFF   |                  | 252.00*             |       | 252.00*             |       |
|          | OPERATING          |   | PSD              | 10,300,343A         |       | 10,585,737A         |       |
|          |                    |   |                  | 7.00*               |       | 7.00*               |       |
|          |                    |   | PSD              | 563,336N            |       | 563,336N            |       |
|          |                    |   |                  | 72.00*              |       | 72.00*              |       |
|          |                    |   | PSD              | 6,056,303U          |       | 6,056,303U          |       |
| 14.      | PSD611             | - ADULT PAROLE DETERMINATIONS                           |                  | 2.00*               |       | 2.00*               |       |
|          | OPERATING          |   | PSD              | 196,352A            |       | 196,352A            |       |
| 15.      | PSD612             | - ADULT PAROLE SUPERVISION AND COUNSELING               |                  | 54.00*              |       | 54.00*              |       |
|          | OPERATING          |   | PSD              | 3,303,887A          |       | 3,303,887A          |       |
| 16.      | PSD613             | - CRIME VICTIM COMPENSATION COMMISSION                  |                  | 7.00*               |       | 7.00*               |       |
|          | OPERATING          |   | PSD              | 1,741,242B          |       | 1,741,242B          |       |
|          |                    |   | PSD              | 850,000N            |       | 850,000N            |       |
| 17.      | PSD900             | - GENERAL ADMINISTRATION                                |                  | 145.10*             |       | 145.10*             |       |
|          | OPERATING          |   | PSD              | 57,454,201A         |       | 58,781,167A         |       |
|          |                    |   | PSD              | 693,832B            |       | 693,832B            |       |
|          |                    |   | PSD              | 75,065T             |       | 75,065T             |       |
|          |                    |   |                  | 9.00*               |       | 9.00*               |       |
|          |                    |   | PSD              | 7,578,537W          |       | 7,578,537W          |       |
|          |                    |   | PSD              | 742,980X            |       | 742,980X            |       |
|          | INVESTMENT CAPITAL |   | AGS              | 2,000,000C          |       |                     | C     |
| 18.      | ATG231             | - STATE CRIMINAL JUSTICE INFORMATION AND IDENTIFICATION |                  | 30.00*              |       | 30.00*              |       |
|          | OPERATING          |   | ATG              | 1,636,666A          |       | 1,636,666A          |       |
|          |                    |   | ATG              | 1,800,000N          |       | 1,800,000N          |       |
|          |                    |   |                  | 15.00*              |       | 15.00*              |       |
|          |                    |   | ATG              | 2,512,813W          |       | 2,523,480W          |       |
| 19.      | LNR810             | - PREVENTION OF NATURAL DISASTERS                       |                  | 2.10*               |       | 2.10*               |       |
|          | OPERATING          |   | LNR              | 133,631A            |       | 133,631A            |       |
|          |                    |   |                  | .90*                |       | .90*                |       |
|          |                    |   | LNR              | 318,519N            |       | 318,519N            |       |
| 20.      | DEF110             | - AMELIORATION OF PHYSICAL DISASTERS                    |                  | 122.80*             |       | 122.80*             |       |
|          | OPERATING          |   | DEF              | 7,992,197A          |       | 7,906,023A          |       |
|          |                    |   |                  | 47.70*              |       | 47.70*              |       |
|          |                    |   | DEF              | 19,997,125N         |       | 19,674,625N         |       |
|          | INVESTMENT CAPITAL |   | AGS              | 1,639,000C          |       | 1,403,000C          |       |
|          |                    |   | AGS              | 100,000N            |       | 100,000N            |       |
|          |                    |   | DEF              | 100,000C            |       | 300,000C            |       |
|          |                    |   | DEF              |                     |       |                     | N     |
|          |                    |   |                  |                     |       | 4,000,000N          |       |

PROGRAM APPROPRIATIONS

| ITEM NO.                    | PROG. ID  | PROGRAM   | EXPENDING AGENCY | APPROPRIATIONS      |             |                     |             |
|-----------------------------|-----------|---|------------------|---------------------|-------------|---------------------|-------------|
|                             |           |   |                  | FISCAL YEAR 2005-06 | M O F       | FISCAL YEAR 2006-07 | M O F       |
| <b>J. INDIVIDUAL RIGHTS</b> |           |   |                  |                     |             |                     |             |
| 1.                          | CCA102    | CABLE TELEVISION  |                  |                     |             |                     |             |
|                             | OPERATING |   | CCA              |                     | 4.00*       |                     | 4.00*       |
|                             |           |   |                  | 1,208,738B          |             | 1,208,738B          |             |
| 2.                          | CCA103    | CONSUMER ADVOCATE FOR COMMUNICATION, UTILITIES, AND TRANSPORTATION SERVICES |                  |                     |             |                     |             |
|                             | OPERATING |   | CCA              |                     | 23.00*      |                     | 23.00*      |
|                             |           |   |                  | 2,592,100B          |             | 2,592,100B          |             |
| 3.                          | CCA104    | FINANCIAL INSTITUTION SERVICES  |                  |                     |             |                     |             |
|                             | OPERATING |   | CCA              |                     | 29.00*      |                     | 29.00*      |
|                             |           |   |                  | 2,443,258B          |             | 2,443,258B          |             |
| 4.                          | CCA105    | PROFESSIONAL, VOCATIONAL, AND PERSONAL SERVICES                             |                  |                     |             |                     |             |
|                             | OPERATING |   | CCA              |                     | 56.00*      |                     | 56.00*      |
|                             |           |   |                  | 4,949,871B          |             | 4,949,871B          |             |
|                             |           |   | CCA              |                     | 4.00*       |                     | 4.00*       |
|                             |           |   |                  | 1,792,847T          |             | 1,792,847T          |             |
| 5.                          | BUF901    | TRANSPORTATION, COMMUNICATIONS, AND UTILITIES                               |                  |                     |             |                     |             |
|                             | OPERATING |   | BUF              |                     | 41.00*      |                     | 41.00*      |
|                             |           |   |                  | 8,505,197B          |             | 8,205,197B          |             |
| 6.                          | CCA106    | INSURANCE REGULATORY SERVICES   |                  |                     |             |                     |             |
|                             | OPERATING |   | CCA              |                     | 76.00*      |                     | 76.00*      |
|                             |           |   | CCA              |                     | 11,217,079B |                     | 11,018,739B |
|                             |           |   |                  | 200,000T            |             | 200,000T            |             |
| 7.                          | CCA110    | OFFICE OF CONSUMER PROTECTION - UNFAIR AND DECEPTIVE PRACTICES              |                  |                     |             |                     |             |
|                             | OPERATING |   | CCA              |                     | 16.00*      |                     | 16.00*      |
|                             |           |   | CCA              |                     | 1,487,471B  |                     | 1,487,471B  |
|                             |           |   |                  | 50,681T             |             | 50,681T             |             |
| 8.                          | AGR812    | MEASUREMENT STANDARDS   |                  |                     |             |                     |             |
|                             | OPERATING |   | AGR              |                     | 15.00*      |                     | 15.00*      |
|                             |           |   |                  | 671,431A            |             | 671,431A            |             |
| 9.                          | CCA111    | BUSINESS REGISTRATION   |                  |                     |             |                     |             |
|                             | OPERATING |   | CCA              |                     | 73.00*      |                     | 73.00*      |
|                             |           |   |                  | 5,918,382B          |             | 5,918,382B          |             |
| 10.                         | CCA112    | REGULATED INDUSTRIES COMPLAINTS OFFICE                                      |                  |                     |             |                     |             |
|                             | OPERATING |   | CCA              |                     | 14.00*      |                     | 14.00*      |
|                             |           |   |                  | 4,975,448B          |             | 4,975,448B          |             |
| 11.                         | CCA191    | GENERAL SUPPORT - PROTECTION OF THE CONSUMER                                |                  |                     |             |                     |             |
|                             | OPERATING |   | CCA              |                     | 43.00*      |                     | 43.00*      |
|                             |           |   |                  | 4,872,168B          |             | 4,872,168B          |             |
| 12.                         | LTG105    | ENFORCEMENT OF INFORMATION PRACTICES  |                  |                     |             |                     |             |
|                             | OPERATING |   | LTG              |                     | 5.00*       |                     | 5.00*       |
|                             |           |   |                  | 385,587A            |             | 385,587A            |             |
| 13.                         | BUF151    | LEGAL ASSISTANCE IN CRIMINAL ACTIONS  |                  |                     |             |                     |             |
|                             | OPERATING |   | BUF              |                     | 80.00*      |                     | 80.00*      |
|                             |           |   |                  | 8,517,898A          |             | 8,558,414A          |             |



## PROGRAM APPROPRIATIONS

| ITEM NO.                          | PROG. ID           | PROGRAM   | EXPENDING AGENCY | APPROPRIATIONS      |       |                     |       |
|-----------------------------------|--------------------|---|------------------|---------------------|-------|---------------------|-------|
|                                   |                    |   |                  | FISCAL YEAR 2005-06 | M O F | FISCAL YEAR 2006-07 | M O F |
| 14.                               | LNR111             | - CONVEYANCES AND RECORDINGS                    |                  |                     |       |                     |       |
|                                   | OPERATING          |   | LNR              | 55.00*              |       | 55.00*              |       |
|                                   |                    |   |                  | 3,665,582B          |       | 3,348,355B          |       |
| 15.                               | HMS888             | - COMMISSION ON THE STATUS OF WOMEN             |                  |                     |       |                     |       |
|                                   | OPERATING          |   | HMS              | 1.00*               |       | 1.00*               |       |
|                                   |                    |   |                  | 97,492A             |       | 97,492A             |       |
| <b>K. GOVERNMENT-WIDE SUPPORT</b> |                    |   |                  |                     |       |                     |       |
| 1.                                | GOV100             | - OFFICE OF THE GOVERNOR                        |                  |                     |       |                     |       |
|                                   | OPERATING          |   | GOV              | 34.00*              |       | 34.00*              |       |
|                                   | INVESTMENT CAPITAL |   | GOV              | 3,174,794A          |       | 3,174,794A          |       |
|                                   |                    |   |                  | 1,000C              |       | 1,000C              |       |
| 2.                                | LTG100             | - OFFICE OF THE LIEUTENANT GOVERNOR             |                  |                     |       |                     |       |
|                                   | OPERATING          |   | LTG              | 3.00*               |       | 3.00*               |       |
|                                   |                    |   |                  | 614,727A            |       | 614,727A            |       |
| 3.                                | GOV102             | - OTHER POLICY DEVELOPMENT AND COORDINATION     |                  |                     |       |                     |       |
|                                   | OPERATING          |   | GOV              | 3.00*               |       | 3.00*               |       |
|                                   |                    |   |                  | 238,877A            |       | 238,877A            |       |
| 4.                                | BED144             | - STATEWIDE PLANNING AND COORDINATION           |                  |                     |       |                     |       |
|                                   | OPERATING          |   | BED              | 18.00*              |       | 18.00*              |       |
|                                   |                    |   |                  | 1,580,561A          |       | 1,580,561A          |       |
|                                   |                    |   |                  | 4.00*               |       | 4.00*               |       |
|                                   |                    |   | BED              | 2,433,682N          |       | 2,304,282N          |       |
|                                   |                    |   | BED              | 1,000,000W          |       | 1,000,000W          |       |
| 5.                                | BED103             | - STATEWIDE LAND USE MANAGEMENT                 |                  |                     |       |                     |       |
|                                   | OPERATING          |   | BED              | 6.00*               |       | 6.00*               |       |
|                                   |                    |   |                  | 466,200A            |       | 466,200A            |       |
| 6.                                | BED130             | - ECONOMIC PLANNING AND RESEARCH                |                  |                     |       |                     |       |
|                                   | OPERATING          |   | BED              | 16.00*              |       | 16.00*              |       |
|                                   |                    |   |                  | 977,480A            |       | 977,480A            |       |
|                                   |                    |   |                  | 4.00*               |       | 4.00*               |       |
|                                   |                    |   | BED              | 1,327,887B          |       | 1,327,887B          |       |
| 7.                                | BUF101             | - DEPARTMENTAL ADMINISTRATION & BUDGET DIVISION |                  |                     |       |                     |       |
|                                   | OPERATING          |   | BUF              | 49.00*              |       | 49.00*              |       |
|                                   |                    |   | BUF              | 152,152,289A        |       | 159,556,392A        |       |
|                                   |                    |   | BUF              | 30,957N             |       | 30,957N             |       |
|                                   |                    |   | BUF              | 218,826,133U        |       | 232,172,479U        |       |
|                                   |                    |   | BUF              | 899X                |       | 899X                |       |
|                                   | INVESTMENT CAPITAL |   | AGS              | 1,200,000C          |       | C                   |       |
|                                   |                    |   | BUF              | 242,114,000C        |       | 92,400,000C         |       |
| 8.                                | AGS871             | - CAMPAIGN SPENDING COMMISSION                  |                  |                     |       |                     |       |
|                                   | OPERATING          |   | AGS              | 5.00*               |       | 5.00*               |       |
|                                   |                    |   |                  | 434,538T            |       | 4,463,226T          |       |
| 9.                                | AGS879             | - OFFICE OF ELECTIONS                           |                  |                     |       |                     |       |
|                                   | OPERATING          |   | AGS              | 3.00*               |       | 3.00*               |       |
|                                   |                    |   | AGS              | 2,851,773A          |       | 2,451,785A          |       |
|                                   |                    |   |                  | 7,446,803N          |       | N                   |       |
| 10.                               | TAX102             | - INCOME ASSESSMENT AND AUDIT                   |                  |                     |       |                     |       |
|                                   | OPERATING          |   | TAX              | 101.00*             |       | 101.00*             |       |
|                                   |                    |   |                  | 4,727,884A          |       | 4,757,096A          |       |

**ACT 178**

**PROGRAM APPROPRIATIONS**

| ITEM NO. | PROG. ID           | PROGRAM                                       | EXPENDING AGENCY | APPROPRIATIONS      |       |                     |       |
|----------|--------------------|---|------------------|---------------------|-------|---------------------|-------|
|          |                    |   |                  | FISCAL YEAR 2005-06 | M O F | FISCAL YEAR 2006-07 | M O F |
| 11.      | TAX103 -           | TAX COLLECTIONS ENFORCEMENT                   |                  |                     |       |                     |       |
|          | OPERATING          |   | TAX              | 88.50*              |       | 94.50*              |       |
|          |                    |   |                  | 3,440,558A          |       | 3,628,186A          |       |
| 12.      | TAX105 -           | TAX SERVICES AND PROCESSING                   |                  |                     |       |                     |       |
|          | OPERATING          |   | TAX              | 110.00*             |       | 110.00*             |       |
|          |                    |   |                  | 5,655,764A          |       | 5,655,764A          |       |
| 13.      | TAX107 -           | SUPPORTING SERVICES - REVENUE COLLECTION      |                  |                     |       |                     |       |
|          | OPERATING          |   | TAX              | 67.00*              |       | 67.00*              |       |
|          |                    |   | TAX              | 7,849,807A          |       | 7,315,807A          |       |
|          |                    |   |                  | 452,000B            |       | 452,000B            |       |
| 14.      | AGS101 -           | ACCOUNTING SYSTEM DEVELOPMENT AND MAINTENANCE |                  |                     |       |                     |       |
|          | OPERATING          |   | AGS              | 7.00*               |       | 7.00*               |       |
|          |                    |   |                  | 728,289A            |       | 728,289A            |       |
| 15.      | AGS102 -           | EXPENDITURE EXAMINATION                       |                  |                     |       |                     |       |
|          | OPERATING          |   | AGS              | 18.00*              |       | 18.00*              |       |
|          |                    |   |                  | 1,052,954A          |       | 1,052,954A          |       |
| 16.      | AGS103 -           | RECORDING AND REPORTING                       |                  |                     |       |                     |       |
|          | OPERATING          |   | AGS              | 11.00*              |       | 11.00*              |       |
|          |                    |   |                  | 627,606A            |       | 627,606A            |       |
| 17.      | AGS104 -           | INTERNAL POST AUDIT                           |                  |                     |       |                     |       |
|          | OPERATING          |   | AGS              | 12.00*              |       | 12.00*              |       |
|          |                    |   |                  | 663,787A            |       | 663,787A            |       |
| 18.      | BUF115 -           | FINANCIAL ADMINISTRATION                      |                  |                     |       |                     |       |
|          | OPERATING          |   | BUF              | 14.00*              |       | 14.00*              |       |
|          |                    |   |                  | 233,885,233A        |       | 262,208,731A        |       |
|          |                    |   | BUF              | 4.00*               |       | 4.00*               |       |
|          |                    |   | BUF              | 4,768,000T          |       | 4,768,000T          |       |
|          |                    |   | BUF              | 279,922,453U        |       | 314,856,853U        |       |
| 19.      | ATG100 -           | LEGAL SERVICES                                |                  |                     |       |                     |       |
|          | OPERATING          |   | ATG              | 206.15*             |       | 206.15*             |       |
|          |                    |   |                  | 18,351,296A         |       | 18,233,648A         |       |
|          |                    |   | ATG              | 17.00*              |       | 17.00*              |       |
|          |                    |   |                  | 1,569,236B          |       | 1,600,403B          |       |
|          |                    |   | ATG              | 12.00*              |       | 12.00*              |       |
|          |                    |   |                  | 8,493,813N          |       | 8,493,813N          |       |
|          |                    |   | ATG              | 3,918,000T          |       | 3,918,000T          |       |
|          |                    |   | ATG              | 45.35*              |       | 45.35*              |       |
|          |                    |   |                  | 7,203,563U          |       | 7,225,563U          |       |
|          |                    |   | ATG              | 3.00*               |       | 3.00*               |       |
|          |                    |   |                  | 3,096,386W          |       | 2,996,386W          |       |
| 20.      | AGS131 -           | INFORMATION PROCESSING SERVICES               |                  |                     |       |                     |       |
|          | OPERATING          |   | AGS              | 170.00*             |       | 170.00*             |       |
|          |                    |   |                  | 15,630,748A         |       | 15,320,748A         |       |
|          |                    |   | AGS              | 33.00*              |       | 33.00*              |       |
|          |                    |   |                  | 2,182,654U          |       | 2,182,654U          |       |
|          | INVESTMENT CAPITAL |   | AGS              | 1,000,000C          |       |                     | C     |
| 21.      | AGS891 -           | WIRELESS ENHANCED 911 BOARD                   |                  |                     |       |                     |       |
|          | OPERATING          |   | AGS              | 7,000,000B          |       | 6,500,000B          |       |

## PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID           | PROGRAM  | EXPENDING AGENCY | APPROPRIATIONS      |       |                     |       |
|----------|--------------------|--|------------------|---------------------|-------|---------------------|-------|
|          |                    |  |                  | FISCAL YEAR 2005-06 | M O F | FISCAL YEAR 2006-07 | M O F |
| 22.      | HRD102             | - WORK FORCE ATTRACTION, SELECTION, CLASSIFICATION, AND EFFICIENCY |                  |                     |       |                     |       |
|          | OPERATING          |  | HRD              | 99.00*              |       | 99.00*              |       |
|          |                    |  | HRD              | 14,623,581A         |       | 14,623,581A         |       |
|          |                    |  | HRD              | 700,000B            |       | 700,000B            |       |
|          |                    |  | HRD              | 4,886,281U          |       | 4,886,281U          |       |
| 23.      | HRD191             | - SUPPORTING SERVICES  |                  |                     |       |                     |       |
|          | OPERATING          |  | HRD              | 13.00*              |       | 13.00*              |       |
|          |                    |  |                  | 1,339,742A          |       | 1,339,742A          |       |
| 24.      | BUF141             | - RETIREMENT   |                  |                     |       |                     |       |
|          | OPERATING          |  | BUF              | 201,895,621A        |       | 207,081,631A        |       |
|          |                    |  | BUF              | 283,883,400U        |       | 292,127,076U        |       |
|          |                    |  |                  | 75.00*              |       | 75.00*              |       |
|          |                    |  | BUF              | 8,077,962X          |       | 8,077,962X          |       |
| 25.      | BUF143             | - HAWAII EMPLOYER - UNION TRUST FUND                               |                  |                     |       |                     |       |
|          | OPERATING          |  | BUF              | 26.00*              |       | 26.00*              |       |
|          |                    |  |                  | 3,925,905T          |       | 3,157,444T          |       |
| 26.      | LNR101             | - PUBLIC LANDS MANAGEMENT  |                  |                     |       |                     |       |
|          | OPERATING          |  | LNR              | 51.00*              |       | 51.00*              |       |
|          |                    |  | LNR              | 5,853,470B          |       | 5,853,470B          |       |
|          | INVESTMENT CAPITAL |  | LNR              | 72,634N             |       | 72,634N             |       |
|          |                    |  |                  | 4,000,000C          |       | C                   |       |
| 27.      | AGS203             | - RISK MANAGEMENT  |                  |                     |       |                     |       |
|          | OPERATING          |  | AGS              | 4.00*               |       | 4.00*               |       |
|          |                    |  | AGS              | 425,081A            |       | 425,081A            |       |
|          |                    |  | AGS              | 11,950,000W         |       | 11,950,000W         |       |
| 28.      | AGS211             | - LAND SURVEY  |                  |                     |       |                     |       |
|          | OPERATING          |  | AGS              | 17.00*              |       | 17.00*              |       |
|          |                    |  | AGS              | 820,789A            |       | 820,789A            |       |
|          |                    |  | AGS              | 285,000U            |       | 285,000U            |       |
| 29.      | AGS223             | - OFFICE LEASING   |                  |                     |       |                     |       |
|          | OPERATING          |  | AGS              | 4.00*               |       | 4.00*               |       |
|          |                    |  | AGS              | 11,600,703A         |       | 11,600,703A         |       |
|          |                    |  | AGS              | 5,500,000U          |       | 5,500,000U          |       |
| 30.      | AGS221             | - CONSTRUCTION   |                  |                     |       |                     |       |
|          | OPERATING          |  | AGS              | 15.00*              |       | 15.00*              |       |
|          |                    |  | AGS              | 1,012,767A          |       | 1,012,767A          |       |
|          |                    |  | AGS              | 4,000,000W          |       | 4,000,000W          |       |
|          | INVESTMENT CAPITAL |  | AGS              | 22,816,000C         |       | 6,172,000C          |       |
|          |                    |  | AGS              | 400,000R            |       | 3,000,000R          |       |
| 31.      | AGS231             | - CUSTODIAL SERVICES   |                  |                     |       |                     |       |
|          | OPERATING          |  | AGS              | 155.50*             |       | 155.50*             |       |
|          |                    |  | AGS              | 13,579,178A         |       | 13,579,178A         |       |
|          |                    |  | AGS              | 58,744B             |       | 58,744B             |       |
|          |                    |  | AGS              | 894,001U            |       | 894,001U            |       |
| 32.      | AGS232             | - GROUNDS MAINTENANCE  |                  |                     |       |                     |       |
|          | OPERATING          |  | AGS              | 39.50*              |       | 39.50*              |       |
|          |                    |  |                  | 1,386,081A          |       | 1,386,081A          |       |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID           | PROGRAM                                   | EXPENDING AGENCY | APPROPRIATIONS      |       |                     |       |
|----------|--------------------|---|------------------|---------------------|-------|---------------------|-------|
|          |                    |   |                  | FISCAL YEAR 2005-06 | M O F | FISCAL YEAR 2006-07 | M O F |
| 33.      |                    | AGS233 - BUILDING REPAIRS AND ALTERATIONS |                  |                     |       |                     |       |
|          | OPERATING          |   | AGS              | 29.00*              |       | 29.00*              |       |
|          |                    |   |                  | 2,564,258A          |       | 2,564,258A          |       |
| 34.      |                    | AGS240 - STATE PROCUREMENT                |                  |                     |       |                     |       |
|          | OPERATING          |   | AGS              | 21.00*              |       | 21.00*              |       |
|          |                    |   |                  | 1,099,647A          |       | 1,099,647A          |       |
| 35.      |                    | AGS244 - SURPLUS PROPERTY MANAGEMENT      |                  |                     |       |                     |       |
|          | OPERATING          |   | AGS              | 5.00*               |       | 5.00*               |       |
|          |                    |   |                  | 1,726,904W          |       | 1,726,904W          |       |
| 36.      |                    | AGS251 - MOTOR POOL                       |                  |                     |       |                     |       |
|          | OPERATING          |   | AGS              | 12.50*              |       | 12.50*              |       |
|          |                    |   |                  | 2,257,938W          |       | 2,257,938W          |       |
| 37.      |                    | AGS252 - PARKING CONTROL                  |                  |                     |       |                     |       |
|          | OPERATING          |   | AGS              | 26.50*              |       | 26.50*              |       |
|          |                    |   |                  | 3,385,621W          |       | 3,205,621W          |       |
| 38.      |                    | AGS111 - RECORDS MANAGEMENT               |                  |                     |       |                     |       |
|          | OPERATING          |   | AGS              | 18.00*              |       | 18.00*              |       |
|          |                    |   |                  | 780,742A            |       | 780,742A            |       |
| 39.      |                    | AGS901 - GENERAL ADMINISTRATIVE SERVICES  |                  |                     |       |                     |       |
|          | OPERATING          |   | AGS              | 39.00*              |       | 39.00*              |       |
|          |                    |   |                  | 2,171,687A          |       | 2,171,687A          |       |
|          |                    |   | AGS              | 1.00*               |       | 1.00*               |       |
|          |                    |   |                  | 56,216U             |       | 56,216U             |       |
| 40.      |                    | SUB201 - CITY AND COUNTY OF HONOLULU      |                  |                     |       |                     |       |
|          | OPERATING          |   | SUB              | 200,000A            |       | 200,000A            |       |
|          |                    |   | SUB              | 4,000,000B          |       |                     | B     |
|          | INVESTMENT CAPITAL |   | CCH              | 1,950,000C          |       |                     | C     |
| 41.      |                    | SUB301 - COUNTY OF HAWAII                 |                  |                     |       |                     |       |
|          | OPERATING          |   | SUB              | 630,000A            |       | 630,000A            |       |
|          |                    |   | SUB              | 2,000,000B          |       |                     | B     |
|          | INVESTMENT CAPITAL |   | COH              | 6,000,000C          |       |                     | C     |
| 42.      |                    | SUB401 - COUNTY OF MAUI                   |                  |                     |       |                     |       |
|          | OPERATING          |   | SUB              | 200,000A            |       | 200,000A            |       |
|          |                    |   | SUB              | 2,000,000B          |       |                     | B     |
| 43.      |                    | SUB501 - COUNTY OF KAUAI                  |                  |                     |       |                     |       |
|          | OPERATING          |   | SUB              | 200,000A            |       | 200,000A            |       |
|          |                    |   | SUB              | 2,000,000B          |       |                     | B     |
|          | INVESTMENT CAPITAL |   | COK              | 1,650,000C          |       |                     | C     |

PART III. PROGRAM APPROPRIATION PROVISIONS

ECONOMIC DEVELOPMENT

SECTION 4. Provided that for tourism (BED 113), the Hawaii tourism authority shall submit a detailed report for expenditures comparing budget appropriations to actual expenditures for fiscal years 2005-2006 and 2006-2007 (four

months actual, eight months forecasted) with accompanying explanations for variances thereof for the Hawaii convention center operations; provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions; provided further that the authority shall be assessed a fee of \$10,000 for each business day beyond the date that the report is due; and provided further that the authority shall deposit all assessments to the general fund.

SECTION 5. Provided that of the general fund appropriation for agricultural resource management (AGR 141), the sum of \$425,000 for fiscal year 2005-2006 and the sum of \$425,000 for fiscal year 2006-2007 shall be deposited into the irrigation system revolving fund to be expended for purposes of the fund.

SECTION 6. Provided that of the revolving fund appropriation for agricultural resource management (AGR 141), the sum of \$156,353 for fiscal year 2005-2006 and \$154,315 for fiscal year 2006-2007 shall be expended for the purpose of the lower Hamakua ditch watershed project.

SECTION 7. Provided that of the general fund appropriation for agribusiness development (AGR 161), the sum of \$140,558 for fiscal year 2005-2006 and the sum of \$140,558 for fiscal year 2006-2007 shall be deposited into the Hawaii agricultural development revolving fund to be expended for purposes of the fund.

SECTION 8. Provided that of the revolving fund appropriation from the Hawaii community development authority (BED 150), the sum of \$100,000 for fiscal year 2005-2006 and fiscal year 2006-2007 shall be transferred to park development and operation (LNR 806), to continue basic maintenance of the Kakaako Waterfront Park and the Kewalo Basin Park; provided further that such maintenance shall meet or exceed the level of maintenance currently provided by the department of land and natural resources; and provided further that this amount shall cover the entire costs of maintenance of the two parks at current levels of maintenance, and such costs shall not be increased.

## EMPLOYMENT

SECTION 9. Provided that of the general fund appropriation for occupational safety and health (LBR 143), the sum of \$857,276 for fiscal year 2005-2006 and the sum of \$857,276 for fiscal year 2006-2007 shall be expended for boiler and elevator safety; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse into the general fund; provided further that the department of labor and industrial relations shall submit detailed reports each year that shall include but not be limited to the amount of expenditures, the amount of revenues, and effectiveness of the safety program and shall include the complete report from the previous fiscal year; provided further that the reports shall be submitted to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions; provided further that the department shall be assessed a fee of \$10,000 for each business day beyond the date that the reports are due; and provided further that the director of the department of labor shall deposit all assessments to the general fund.

## TRANSPORTATION

SECTION 10. Provided that of the special fund appropriations for the airports division (TRN 102-TRN 195), the following sums specified for special

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repair and maintenance projects for fiscal biennium 2005-2007, shall be expended for special repair and maintenance purposes only as follows:

| <u>Program I.D.</u> | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|---------------------|---------------------|---------------------|
| TRN 102             | \$4,755,000         | \$5,825,000         |
| TRN 104             | \$ 710,000          | \$1,800,000         |
| TRN 111             | \$2,794,000         | \$1,325,000         |
| TRN 114             | \$2,590,000         | \$1,610,000         |
| TRN 116             | \$ 250,000          | \$ 100,000          |
| TRN 118             | \$ 195,000          | \$ 100,000          |
| TRN 131             | \$1,330,000         | \$ 325,000          |
| TRN 133             | \$ 50,000           | \$ 190,000          |
| TRN 135             | \$ 530,000          | \$ 35,000           |
| TRN 141             | \$ 100,000          | \$ 240,000          |
| TRN 143             | \$ 175,000          | \$ 100,000          |
| TRN 151             | \$ 480,000          | \$ 135,000          |
| TRN 161             | \$2,010,000         | \$5,765,000         |
| TRN 163             | \$ -0-              | \$ 25,000           |
| TRN 195             | \$1,100,000         | \$ 750,000;         |

provided further that any unexpended funds shall be lapsed to the airport special fund; provided further that the department of transportation shall prepare a report on planned uses and actual expenditures of all special repair and maintenance appropriations as of December 1 for each fiscal year; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.

SECTION 11. Provided that of the special fund appropriation for airports administration (TRN 195), the sum of \$70,134,000 for fiscal year 2005-2006 and the sum of \$70,129,033 for fiscal year 2006-2007 shall be expended for the following purposes:

| <u>Purpose</u>  | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|---|---------------------|---------------------|
| Interest and principal on<br>general obligation bonds | \$ 11,871           | \$ 11,442           |
| Interest and principal on<br>revenue bonds            | \$70,122,129        | \$70,117,591;       |

provided further that any funds not expended for these purposes shall lapse to the airport special fund.

SECTION 12. Provided that of the special fund appropriations for the harbors division (TRN 301-TRN 395), the following sums specified for special repair and maintenance projects for fiscal biennium 2005-2007, shall be expended for special repair and maintenance purposes only as follows:

| <u>Program I.D.</u> | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|---------------------|---------------------|---------------------|
| TRN 301             | \$5,684,000         | \$5,344,000         |
| TRN 303             | \$ 331,000          | \$ 331,000          |
| TRN 305             | \$ 465,000          | \$ 465,000          |
| TRN 311             | \$ 826,000          | \$ 846,000          |
| TRN 313             | \$ 756,000          | \$ 526,000          |
| TRN 331             | \$ 936,000          | \$ 936,000          |
| TRN 341             | \$ 368,400          | \$ 368,400          |
| TRN 351             | \$ 208,000          | \$ 208,000          |

| <u>Program I.D.</u> | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|---------------------|---------------------|---------------------|
| TRN 361             | \$ 673,000          | \$ 673,000          |
| TRN 363             | \$ 393,000          | \$ 393,000;         |

provided further that any unexpended funds shall be lapsed to the harbor special fund; provided further that the department of transportation shall prepare a report on planned uses and actual expenditures of all special repair and maintenance appropriations as of December 1 for each fiscal year; provided further this report shall also include the previous fiscal year; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.

SECTION 13. Provided that of the special fund appropriation for harbors administration (TRN 395), the sum of \$24,499,024 for fiscal year 2005-2006 and the sum of \$24,539,732 for fiscal year 2006-2007 shall be expended for the following purposes:

| <u>Purpose</u>                                     | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|--|---------------------|---------------------|
| Interest and principal on general obligation bonds | \$ 25,017           | \$ 24,763           |
| Interest and principal on revenue bonds            | \$24,474,007        | \$24,514,969;       |

provided further that any funds not expended for these purposes shall lapse to the harbor special fund.

SECTION 14. Provided that of the special fund appropriations for the harbors division (TRN 301-395), the following sums specified for security for fiscal biennium 2005-2007, shall be expended for security purposes only as follows:

| <u>Program I.D.</u> | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|---------------------|---------------------|---------------------|
| TRN 301             | \$4,452,400         | \$4,452,400         |
| TRN 303             | \$ 216,004          | \$ 216,004          |
| TRN 305             | \$ -0-              | \$ -0-              |
| TRN 311             | \$ 232,000          | \$ 232,000          |
| TRN 313             | \$ 66,750           | \$ 66,750           |
| TRN 331             | \$ 254,000          | \$ 254,000          |
| TRN 341             | \$ -0-              | \$ -0-              |
| TRN 351             | \$ -0-              | \$ -0-              |
| TRN 361             | \$ 263,000          | \$ 263,000          |
| TRN 363             | \$ 403,363          | \$ 443,699          |
| TRN 395             | \$2,035,000         | \$2,035,000;        |

provided further that any unexpended funds shall be lapsed to the state harbor fund; provided further that the department of transportation shall prepare a report on actual expenditures of all security appropriations as of June 30 for each fiscal year; provided further this report shall include the previous fiscal year; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.

SECTION 15. Provided that of the special fund appropriations for the highways division (TRN 501-TRN 595), the following sums specified for special repair and maintenance projects for fiscal biennium 2005-2007, shall be expended for special repair and maintenance purposes only as follows:

| <u>Program I.D.</u> | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|---------------------|---------------------|---------------------|
| TRN 501             | \$35,320,000        | \$27,746,000        |
| TRN 511             | \$14,873,408        | \$16,463,408        |
| TRN 531             | \$10,787,146        | \$11,096,508        |
| TRN 541             | \$ 3,406,362        | \$ 3,295,000        |
| TRN 551             | \$ 518,037          | \$ 518,037          |
| TRN 561             | \$ 6,481,534        | \$ 8,021,534        |
| TRN 595             | \$ 1,424,000        | \$ 60,000;          |

provided further that any unexpended funds shall be lapsed to the state highway fund; provided further that the department of transportation shall prepare a report on planned uses and actual expenditures of all special repair and maintenance appropriations as of December 1 for each fiscal year; provided further each report shall also include the previous fiscal year; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.

SECTION 16. Provided that of the special fund appropriation for highways administration (TRN 595), the sum of \$50,000 for fiscal year 2005-2006 shall be used to support and complete the noise level study for the residential area of Puakala Street, Poopala Street, and Laka Street immediately adjacent to the H-1 freeway, Oahu; provided further that the study shall include but not be limited to recommendations and requirements for the abatement of freeway noise impacting the safety and health of the residents of Puakala Street, Poopala Street, and Laka Street; and provided further that this study shall be completed by June 30, 2006 and the results thereof shall be submitted to the legislature upon its completion.

SECTION 17. Provided that for highways administration (TRN 595), the department of transportation highways division shall review all studies, designs, and plans for the Pali Contraflow project, to include but not be limited to, the 1988 Kaku Associates study, and provide an update of possible traffic congestion mitigation measures for Pali Highway from Castle Junction to Bishop Street or segment thereof including suggested route and cost updates; provided further the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2006 regular session.

SECTION 18. Provided that of the special fund appropriation for highways administration (TRN 595), the sum of \$52,912,056 for fiscal year 2005-2006 and the sum of \$55,064,644 for fiscal year 2006-2007 shall be expended for the following purposes:

| <u>Purpose</u>                                     | <u>FY 2005-2006</u> | <u>FY 2006-2007</u> |
|--|---------------------|---------------------|
| Interest and principal on general obligation bonds | \$20,218,205        | \$17,686,416        |
| Interest and principal on revenue bonds            | \$32,693,851        | \$37,378,228;       |

provided further that any funds not expended for this purpose shall lapse to the state highway fund.

ENVIRONMENTAL PROTECTION

SECTION 19. Provided that of the general fund appropriation for forests and wildlife resources (LNR 402), the sum of \$2,000,000 for fiscal year 2005-2006 and



the sum of \$2,000,000 for fiscal year 2006-2007 shall be expended for the Hawaii invasive species program; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse into the general fund; provided further that the department of land and natural resources shall submit detailed reports each year that shall include but not be limited to the amount of expenditures, the amount of revenues, and the effectiveness of the Hawaii invasive species program and shall include the complete report from the previous fiscal year; provided further that the reports shall be submitted to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions; provided further that the department shall be assessed a fee of \$10,000 for each business day beyond the date that the report is due; and provided further that the director of the department of land and natural resources shall deposit all assessments to the general fund.

SECTION 20. Provided that the environmental health administration (HTH 849), shall submit a report on all revenues and expenditures from the environmental response revolving fund as of December 1; provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions; provided further that the department shall be assessed a fee of \$10,000 for each business day beyond the date that the report is due; and provided further that the director of the department of health shall deposit all assessments to the general fund.

SECTION 21. Provided that of the revolving fund appropriation for environmental health administration (HTH 849), the sum of \$100,000 from the environmental response revolving fund shall be expended for the Hawaii Energy Policy Forum.

## HEALTH

SECTION 22. Provided that of the general fund appropriation for emergency medical services (HTH 730), the sum of \$1,000,000, or so much thereof as may be necessary for fiscal year 2005-2006, and the sum of \$1,000,000, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of health to provide for the county of Maui emergency aeromedical helicopter services and appropriate EMS personnel; provided further that no funds shall be expended under this section unless the county of Maui provides matching funds on a dollar for dollar basis of up to \$650,000, or so much thereof as may be necessary for fiscal year 2005-2006, and up to \$650,000, or so much thereof as may be necessary for fiscal year 2006-2007, for emergency aeromedical helicopter services; and provided further that any unexpended funds shall lapse into the general fund.

SECTION 23. Provided that the healthy start program (HTH 550), shall prepare and submit a detailed report evaluating its delivery of services and specifically focusing on the purchase of services for home visit services; provided further that the report shall include findings and substantive recommendations for the overall restructuring of the healthy start program; provided further that the report shall also include, but not be limited to the following information:

- (1) Recommendations to address the issues of engagement and retention of at-risk families;
- (2) New measures of effectiveness for the healthy start program to restructure its program to meet the current needs of this program;
- (3) Whether the voluntary nature of the program should be reevaluated and provide recommendations for retooling;

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- (4) A detailed financial report from each of its providers including a detailed breakdown of services provided and costs incurred including treatment outcome and performance reports on each service provided for its home visits and for all other services provided by the healthy start program;
- (5) A review of the effectiveness of its current methods to assess, identify, and offer services to those families needing extra support among all civilian birth families in Hawaii and determine whether these services are needed; and
- (6) Recommendations to ensure that provider billings are appropriate and services were provided accordingly;

provided further that the healthy start program shall submit its recommendations and findings in a detailed report to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions; provided further that the healthy start program shall be assessed<sup>1</sup> a fee of \$10,000 for each business day beyond the date that the report is due; and provided further that the comptroller shall collect and deposit all assessments to the general fund.

SECTION 24. Provided that of the special fund appropriation for health resources administration (HTH 595), the sum of \$10,327,883, or so much thereof as may be necessary for fiscal year 2005-2006, and the sum of \$10,327,883, or so much thereof as may be necessary for fiscal year 2006-2007, shall be deposited into the emergency and budget reserve fund.

SECTION 25. Provided that the health resources administration (HTH 595), which includes the healthy Hawaii initiative, shall prepare a detailed progress report each year to include but not be limited to the status of the healthy Hawaii initiative, including a listing of any statistical successes resulting from this program; provided further that the report shall identify the impact on the following three components of the healthy Hawaii initiative:

- (1) Community based initiatives;
- (2) Public awareness and professional educational campaigns; and
- (3) School-based programs;

or any other aspect of the healthy Hawaii initiative success due to the reallocation of funds from the tobacco settlement fund to the healthy start purchase of service under maternal and children health services (HTH 550); provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions; provided further that the department shall be assessed a fee of \$10,000 for each business day beyond the date that the report is due; and provided further that the director of the department of health shall deposit all assessments to the general fund.

SECTION 26. Provided that of the special fund appropriation for health resources administration (HTH 595), the sum of \$15,715,462, or so much thereof as may be necessary for fiscal year 2005-2006, and the sum of \$15,715,462, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of health for purposes specified in section 328L-4, Hawaii Revised Statutes; provided further that a sum not to exceed \$4,215,462 of the special fund appropriation for fiscal year 2005-2006, and a sum not to exceed \$4,215,462 of the special fund appropriation for fiscal year 2006-2007, shall be transferred to the department of human services to be expended for the children's health insurance program, pursuant to section 328L-4, Hawaii Revised Statutes; and provided further that the amount of moneys transferred shall not exceed the amount of expenditures anticipated for each fiscal year by the children's health insurance program.

SECTION 27. Provided that of the special fund appropriation for health resources administration (HTH 595), the sum of \$5,269,328, or so much thereof as may be necessary for fiscal year 2005-2006, and the sum of \$5,269,328, or so much thereof as may be necessary for fiscal year 2006-2007, shall be deposited into the Hawaii tobacco prevention and control trust fund.

SECTION 28. Provided that of the special fund appropriation for health resources administration (HTH 595), the sum of \$11,803,295, or so much thereof as may be necessary for fiscal year 2005-2006, and the sum of \$11,803,295, or so much thereof as may be necessary for fiscal year 2006-2007, shall be deposited into the university revenue-undertakings fund.

SECTION 29. Provided that of the special fund appropriation for the family health services division, health resources administration (HTH 595), the sum of up to \$2,000,000 from the early intervention special fund for fiscal year 2005-2006 shall be expended for the Healthy Start program.

SECTION 30. Provided that of the general fund appropriation for the alcohol and drug abuse division (HTH 440), the sum of \$7,292,929 for fiscal year 2005-2006 and \$9,193,224 for fiscal year 2006-2007 shall be expended under the exclusive authority of the department of health to carry out the purposes of the alcohol and drug abuse divisions; provided further that this expending authority of the department of health shall not be transferred to any other State or private entity.

SECTION 31. Provided that of the general fund appropriation for the alcohol and drug abuse division (HTH 440), the sum of \$990,000 for fiscal year 2005-2006 and the sum of \$990,000 for fiscal year 2006-2007 shall be expended for school-based treatment services for all public high schools; provided further that the appropriations shall not be transferred to any other state or private entity.

SECTION 32. Provided that of the general fund appropriation for the alcohol and drug abuse division (HTH 440), the sum of \$320,000 for fiscal year 2005-2006 and the sum of \$1,280,000 for fiscal year 2006-2007 shall be expended for intermediate and middle schools school-based treatment services; provided further that the appropriations shall not be transferred to any other state or private entity.

SECTION 33. Provided that of the general fund appropriation for the alcohol and drug abuse division (HTH 440), the sum of \$730,000 for fiscal year 2005-2006 and the sum of \$730,000 for fiscal year 2006-2007 shall be used for adolescent residential abuse treatment services; and provided further that the appropriations shall not be transferred to any other state or private entity.

SECTION 34. Provided that of the general fund appropriation for the alcohol and drug abuse division (HTH 440), the sum of \$2,000,000 in fiscal year 2006-2007 shall be used for substance abuse prevention, with priority given to drug education and awareness in the schools and community partnerships, non-school youth activities in communities with the greatest need, education and support for families and parenting women, and community mobilization; provided further that the appropriation shall not be transferred to any other state or private entity.

SECTION 35. Provided that of the general fund appropriation for the alcohol and drug abuse division (HTH 440), the sum of \$1,939,975 for fiscal year 2005-2006 and fiscal year 2006-2007 shall be earmarked for licensed residential and therapeutic substance abuse treatment services; provided further that the sum of \$2,060,025 for

fiscal year 2006-2007 shall be used for continued funding for adult substance abuse treatment services, including family counseling, with priority given to women of child-bearing age, pregnant women, parents with young children in their homes, and Hawaiians as defined in section 10-2, Hawaii Revised Statutes; and provided further that the appropriations shall not be transferred to any other state or private entity.

SECTION 36. Provided that of the general fund appropriation for the alcohol and drug abuse division (HTH 440), the sum of \$197,925 for fiscal year 2005-2006 and the sum of \$197,925 for fiscal year 2006-2007 shall be used to fund three temporary positions for the continued implementation of the substance abuse treatment monitoring program; provided further that the appropriations shall not be transferred to any other state or private entity.

### SOCIAL SERVICES

SECTION 37. Provided that of the general fund appropriation for child welfare services (HMS 301), the sum of \$606,803 for fiscal year 2005-2006 and the sum of \$606,803 for fiscal year 2006-2007 shall be expended for multi-agency case coordinators and case support aides; provided further that the department of human services shall submit a report each year to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions that shall include, but not be limited to, the following information:

- (1) The availability of federal funding in support of this initiative, including the amount and requirements that the department of human services must fulfill to receive this funding;
- (2) The number of children aided by the services provided by this initiative and the capacity of service provided by this initiative;
- (3) The caseload per employee; and
- (4) The status of any court mandates that the child welfare services division is subject to;

provided further that the department shall be assessed a fee of \$10,000 for each business day beyond the date that the report is due; and provided further that the director of the department of human services shall deposit all assessments to the general fund.

SECTION 38. Provided that of the general fund appropriation for child welfare services (HMS 301), the sum of \$82,476 for fiscal year 2005-2006 and the sum of \$82,476 for fiscal year 2006-2007 shall be expended for the centralized Title IV-E eligibility determination unit; provided further that the department of human services shall submit a report each year on the amount of federal fund reimbursement received by the eligibility determination unit as a percent of expenditures, the amounts and purposes of the actual (previous fiscal year and current fiscal four months) and planned expenditure of the federal funds, and the actual (previous fiscal year and current fiscal year four months) and planned number of children aided and types of services provided by the additional federal funds; provided further that the department of human services shall also include in the report a breakdown of administrative costs and other overhead costs; provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions; provided further that the department shall be assessed a fee of \$10,000 for each business day beyond the date that the report is due; and provided further that the director of the department of human services shall deposit all assessments to the general fund.

SECTION 39. Provided that of the general fund appropriation for homeless services (HMS 224), the sum of \$1,650,000 for fiscal year 2005-2006 and the sum of \$1,650,000 for fiscal year 2006-2007 shall be expended for the homeless stipend program, outreach program, and homeless grant program; provided further that the department of human services shall submit a report to the legislature identifying the number of homeless persons assisted in the prior two fiscal years and the number of individuals anticipated to be assisted in the current and succeeding fiscal year; provided further that the department of human services shall provide a full list of homeless services rendered; provided further that the department of human services shall provide a detailed financial plan that identifies expenses broken down by cost elements, identified fixed costs, and the average expenditure per client; provided further that expenditures shall be limited to programs specifically identified in the justification sheet for the proposed additional expenditure submitted to the legislature prior to March 1, 2005, and that any funds not expended for those purposes shall lapse to the general fund; provided further that the report required under this section shall be submitted to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions; provided further that the department shall be assessed a fee of \$10,000 for each business day beyond the date that the report is due; and provided further that the director of the department of human services shall deposit all assessments to the general fund.

SECTION 40. Provided that of the general fund appropriation for home and community-based care services (HMS 603), the sum of \$15,121,379 for fiscal year 2005-2006 and the sum of \$15,715,448 for fiscal year 2006-2007 shall be expended for the nursing homes without walls and residential alternative community care programs; provided further that the department of human services shall submit a report each year on the number of clients receiving services and the number projected to receive services, the number of individuals requesting services or on any waitlists, and the number of individuals in the State that qualify for these services; provided further that the report required under this section shall be submitted to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions; provided further that the department shall be assessed a fee of \$10,000 for each business day beyond the date that the report is due; and provided further that the director of the department of human services shall deposit all assessments to the general fund.

SECTION 41. Provided that of the general fund appropriation for adult and community care (HMS 603), the sum of \$756,435 for fiscal year 2005-2006 and the sum of \$756,435 for fiscal year 2006-2007 shall be expended to provide lump sum bonuses to operators of adult residential care homes, as defined in section 321-15.1, who provide care to recipients eligible for either federal Supplemental Security Income, or public assistance in accordance with state standards, or both, provided that these payments to providers will not increase the Maintenance of Effort payment level as agreed between the Social Security Administration and the department of human services; provided further that of the general fund appropriation for home and community based care services, the sum of \$246,396 for fiscal year 2005-2006 and the sum of \$246,396 for fiscal year 2006-2007 shall be expended to provide a rate increase to the Medicaid Waiver rate paid to residential alternative community care (RACC) foster family homes, and extended adult residential care home operators (E-ARCH); and provided further that any funds not expended for this purpose shall be lapsed to the general fund.

SECTION 42. Provided that the department of human services shall submit semi-annual progress reports to the legislature which shall include but not be limited to

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information on the department's progress toward achievement of TANF purposes and additional data as may be determined by the legislature; provided further that the following performance indicators be included in the semi-annual progress reports submitted by the department of human services: potentially eligible households receiving TANF assistance (number and percentage), potentially eligible households receiving TAONF assistance (number and percentage), mandatory households meeting work participation requirements (number and percentage), eligibility determinations completed in a timely manner (number and percentage); and provided further that these reports shall be submitted to the legislature on July 1 and January 1 of each year.

SECTION 43. Provided that the department of human services shall conduct a review of the current internal policies to respond to legislative inquiries; provided further that the department shall establish new written policies to respond to legislative inquiries in a more timely manner; provided further that these policies will include a definitive work plan, a tracking mechanism of legislative requests and reports due, and clearer performance expectations of staff; provided further that the department shall submit to the legislature a report of both the new and old internal procedures to respond to legislative inquiries by August 1, 2005.

### EDUCATION

SECTION 44. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$161,603,234 for fiscal year 2005-2006 and the sum of \$169,613,231 for fiscal year 2006-2007 shall be used to pay for health and other benefits provided by the Hawaii employer-union health benefits trust fund or the voluntary employees' beneficiary association trust (VEBA) for department of education employees and participating employees of charter schools and shall be transferred to the program planning, analysis, and budgeting program (BUF 101) of the department of budget and finance for this purpose; provided further that the funds shall be transferred no later than July 16 of each respective fiscal year; provided further that the department of budget and finance shall submit a detailed report to the legislature comparing general fund appropriations for participating employees of charter schools to actual general fund expenditures for participating employees of charter schools for benefits provided by the Hawaii employer-union health benefits trust fund for each fiscal year; provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions; provided further that the department of budget and finance shall be assessed a fee of \$10,000 for each business day beyond the date that the report is due; and provided further that the director of the department of budget and finance shall deposit all assessments to the general fund.

SECTION 45. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$206,116,917 for fiscal year 2005-2006 and the sum of \$231,840,873 for fiscal year 2006-2007 shall be used to pay for the debt service on general obligation bonds issued for department of education projects and shall be transferred to the financial administration program (BUF 115) of the department of budget and finance for this purpose; and provided further that the funds shall be transferred no later than July 16 of each respective fiscal year.

SECTION 46. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$128,039,679 for fiscal year 2005-2006 and the sum of \$129,934,666 for fiscal year 2006-2007 shall be used to pay for pension accumulation contributions for department of education employees and participating employees of charter schools; provided further that the sum of

\$72,770,756 for fiscal year 2005-2006 and the sum of \$76,103,050 for fiscal year 2006-2007 shall be used to pay for social security/medicare contributions for department of education employees and participating employees of charter schools; provided further that the amounts shall be transferred to the retirement program (BUF 141) of the department of budget and finance for that purpose; provided further that the funds shall be transferred no later than July 16 of each respective fiscal year; provided further that department of budget and finance shall submit a detailed report comparing general fund appropriations for participating employees of charter schools to actual general fund expenditures for participating employees of charter schools share of pension accumulation contributions and social security/medicare contributions for each fiscal year; provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions; provided further that the department of budget and finance shall be assessed a fee of \$10,000 for each business day beyond the date that the report is due; and provided further that the director of the department of budget and finance shall deposit all assessments to the general fund.

SECTION 47. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the following fiscal year 2006-2007 cost items shall be considered non-recurring cost items:

- |  |             |
|--|-------------|
| (1) Equipment for new facilities-regular instruction   | \$2,864,922 |
| (2) Equipment for new facilities-special education     | \$ 27,338   |
| (3) Equipment for new facilities-school administration | \$ 138,456  |
| (4) Equipment for new facilities-school libraries      | \$ 94,135;  |

and provided further that the aforementioned cost items shall be reduced by these amounts at the beginning of fiscal biennium 2007-2009.

SECTION 48. Provided that the department of education shall submit year-to-date data on revenues and expenditures, by all means of financing, from the food services program as of November 30; provided further that the department of education shall submit annualized projections on revenue and expenditures, by all means of financing, from the food services program; provided further that the department of education shall submit annualized projections on estimated total number of lunches to be served segregated into the various categories such as free, reduced, and full payment; provided further that the report and projections shall be submitted to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions; provided further that the department shall be assessed a fee of \$10,000 for each business day beyond the date that the report and projections are due; and provided further that the superintendent of education shall deposit all assessments to the general fund.

SECTION 49. Provided that of the general fund appropriation for comprehensive school support services (EDN 150), for fiscal year 2006-2007; equipment for new facilities – health rooms, \$5,400 shall be considered a non-recurring cost item; and provided further that this cost item shall be reduced by the appropriate amount at the beginning of fiscal biennium 2007-2009.

## HIGHER EDUCATION

SECTION 50. Provided that of the revolving fund appropriation for university of Hawaii, Manoa (UOH 100), the sum of \$10,037,850 for fiscal year 2005-2006 and the sum of \$10,036,058 for fiscal year 2006-2007 shall be applied exclusively to the payment of the principal and interest thereon, and to generate required coverage, if any, for, revenue bonds issued by the board of regents of the university of Hawaii to

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finance the cost of construction of a university health and wellness center, including a new medical school facility, to be situated on the island of Oahu; provided further that any amounts transferred to the university of Hawaii improvement fund pursuant to section 328L-2(b)(4), Hawaii Revised Statutes, determined to be in excess of the debt service requirements for the health and wellness center shall be returned to the emergency budget and reserve fund and the tobacco prevention and control trust fund; and provided further that of the amount determined to be in excess, eighty per cent shall be deposited into the emergency budget and reserve fund and twenty per cent in the tobacco prevention and control trust fund.

SECTION 51. Provided that of the general fund appropriation for university of Hawaii, Manoa (UOH 100), the sum of \$19,461,753 for fiscal year 2005-2006 and the sum of \$19,961,753 for fiscal year 2006-2007 shall be expended for the John A. Burns School of Medicine.

SECTION 52. Provided that of the revolving fund ceiling for university of Hawaii, Manoa (UOH 100), the sum of \$6,241,395 for fiscal year 2005-2006 and the sum of \$7,274,515 for fiscal year 2006-2007 shall be expended from the research and training revolving fund for the John A. Burns School of Medicine.

SECTION 53. Provided that of the general fund appropriation for the university of Hawaii, Manoa (UOH 100), the amount of \$3,700,000 for fiscal year 2006-2007 shall be considered a non-recurring cost item for the John A. Burns School of Medicine facility in Kakaako; provided further that the aforementioned operating subsidy amount shall be reduced from the university's budget at the beginning of fiscal biennium 2007-2009.

SECTION 54. Provided that of the general fund appropriation for university of Hawaii, Manoa (UOH 100), the sum of \$31,000,000 for fiscal year 2005-2006 shall be used for the purpose of cleaning, repairing, or replacing damaged or destroyed university of Hawaii property as a result of the October 30, 2004 flood; provided further that any unexpended and unencumbered funds shall not lapse as of June 30, 2006; provided further that any unexpended and unencumbered funds shall lapse to the general fund as of June 30, 2007.

SECTION 55. Provided that of the general fund appropriation for the university of Hawaii at Manoa (UOH 100), the sum of \$180,000 or so much thereof as may be necessary for fiscal year 2005-2006, and the sum of \$160,000 or so much thereof as may be necessary for fiscal year 2006-2007, shall be used to fund three positions in Ilokano<sup>1</sup> and Philippine Studies.

SECTION 56. Provided that of the general fund appropriation for the university of Hawaii, community colleges (UOH 800), the sum of \$80,000 for fiscal year 2005-2006 and the sum of \$80,000 for fiscal year 2006-2007 shall be expended for the pacific and asian affairs council for the international affairs outreach program.

SECTION 57. Provided that of the general fund appropriation for the university of Hawaii systemwide (UOH 900), the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2005-2006, and the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2006-2007, shall be used to fund the B-Plus Scholarship program; provided further that the university shall offer full scholarships to any Hawaii resident applying to any campus within the university system provided that the individual has graduated from a Hawaii public high school with a cumulative grade point average of 3.0 or better and is considered low income



according to the state of Hawaii department of education's guidelines for students qualifying for the free and reduced lunch program.

SECTION 58. Provided that of the general fund appropriation for system-wide support (UOH 900), the sum of \$57,222,899 for fiscal year 2005-2006 and the sum of \$62,559,248 for fiscal year 2006-2007 shall be used to pay for health and other benefits provided by the Hawaii employer-union health benefits trust fund for university of Hawaii employees and transferred to the program planning, analysis, and budgeting program (BUF 101) of the department of budget and finance for that purpose; and provided further that the funds shall be transferred no later than July 16 of each respective fiscal year.

SECTION 59. Provided that of the general fund appropriation for system-wide support (UOH 900), the sum of \$53,788,061 for fiscal year 2005-2006 and the sum of \$55,463,451 for fiscal year 2006-2007 shall be used to pay for pension accumulation contributions for university of Hawaii employees; provided further that the sum of \$29,284,904 for fiscal year 2005-2006 and the sum of \$30,625,909 for fiscal year 2006-2007 shall be used to pay for social security/medicare contributions for university of Hawaii employees; provided further that the amounts shall be transferred to the retirement program (BUF 141) of the department of budget and finance for that purpose; and provided further that the funds shall be transferred no later than July 16 of each respective fiscal year.

SECTION 60. Provided that of the general fund appropriation for the university of Hawaii for fiscal year 2005-2006 and fiscal year 2006-2007, the university of Hawaii shall expend funds in the program IDs in which they are appropriated, with the exception of funds to be transferred to the department of budget and finance and funds budgeted in systemwide support (UOH 900).

SECTION 61. Provided that of the general fund appropriation for system-wide support (UOH 900), the sum of \$73,800,011 for fiscal year 2005-2006 and the sum of \$83,010,455 for fiscal year 2006-2007 shall be used to pay for debt service on general obligation bonds issued for university of Hawaii projects and transferred to the financial administration program (BUF 115) of the department of budget and finance for that purpose; provided further that the funds shall be transferred no later than July 16 of each respective fiscal year; provided further that the department of budget and finance shall submit a detailed report comparing general fund appropriations to actual general fund expenditures for the university of Hawaii's share of general obligation bond debt service for each fiscal year from the 2001-2002 fiscal year through the last completed fiscal year, and a projection for each of the succeeding two fiscal years; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.

#### PUBLIC SAFETY

SECTION 62. Provided that of the general fund appropriation for intake service centers (PSD 410), the sum of \$30,000 for fiscal year 2005-2006 shall be expended for offender mental health assessments.

SECTION 63. Provided that of the general fund appropriation for intake service centers (PSD 410), corrections program services (PSD 420), and adult parole supervision and counseling (PSD 612), the sum of \$918,401 for fiscal year 2005-2006 and the sum of \$918,401 for fiscal year 2006-2007 shall be expended for

substance abuse treatment, sex offender treatment, transition skills and job development, and mental health treatment programs for the pretrial, incarcerated, and parolee populations; provided further that any unexpended funds shall lapse to the general fund; provided further that the department of public safety shall submit a report each year on all services provided, graduation rates, recidivism rates of graduates, and expenditures for the previous fiscal year and the current fiscal year, four months actual; provided further that this report shall include monthly parole population counts and parole revocations for the previous fiscal year and the current fiscal year, four months actual; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.

**SECTION 64.** Provided that of the general fund appropriation for general administration (PSD 900), the sum of \$39,576,120 for fiscal year 2005–2006 and the sum of \$40,724,428 for fiscal year 2006–2007 shall be expended for mainland prison contracts for transportation and necessary operation costs of housing; provided further that if the department of public safety determines that there are inmates who can be released or paroled for the purpose of treatment, and that such release or parole lowers the number of beds that need to be leased in mainland facilities, then an appropriate part of this sum may be used for treatment services; provided further that any unexpended funds shall lapse into the general fund; provided further that the department of public safety shall submit a report each year of all expenditures made for the mainland prisoners for the previous fiscal year and the current fiscal year, four months actual; provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions; provided further that the department shall be assessed a fee of \$10,000 for each business day beyond the date that the report is due; and provided further that the director of the department of public safety shall deposit all assessments to the general fund.

**SECTION 65.** Provided that of the general fund appropriation for general administration (PSD 900), the sum of \$7,405,978 for fiscal year 2005–2006 and the sum of \$7,572,582 for fiscal year 2006–2007 shall be expended for the housing of inmates at the Hawaii based federal detention centers or mainland facilities; provided further that the department of public safety shall report to the legislature each year concerning the transportation of additional inmates to mainland facilities to provide more space, the total cost including transportation and housing of an inmate on the mainland versus renting bed space at the federal detention center, and a detailed breakdown of the criteria used to select inmates to be moved to mainland facilities; provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions; provided further that the department shall be assessed a fee of \$10,000 for each business day beyond the date that the report is due; and provided further that the director of the department of public safety shall deposit all assessments to the general fund.

**SECTION 66.** Provided that the department of public safety shall evaluate the practice of reallocating funds appropriated for positions that may be vacant to other operational costs; provided further that the department shall develop a plan to realign funds from long standing vacant positions to the appropriate cost elements for the department; provided further that the plan shall include a discussion of the reasons for the practice of reallocating funds, discussion of the expenses paid for using reallocated funds for the previous two fiscal years, and discussion of the legal authority used to reallocate payroll funds for other expenses; and provided further

that the department of public safety shall submit the plan to the legislature no later than October 1, 2005.

SECTION 67. Provided that of the general fund appropriation for amelioration of physical disasters (DEF 110), the sum of \$500,000 for fiscal year 2005-2006 and the sum of \$500,000 for fiscal year 2006-2007 shall be expended for relief from major disasters pursuant to chapter<sup>1</sup> 127-11, Hawaii Revised Statutes; provided further that the department of defense shall notify the legislature within five business days of any expenditure of these funds by submitting a report detailing the date, reason, and amount of the expenditure; and provided further that any funds not expended for this purpose shall be lapsed to the general fund.

### INDIVIDUAL RIGHTS

SECTION 68. Provided that the department of commerce and consumer affairs shall submit a detailed report each year on how the department's expenditures will be aligned with their special fund revenue collections; provided further that this report shall include a discussion of plans to lower its fees to appropriate levels; provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions; provided further that the department shall be assessed a fee of \$10,000 for each business day beyond the date that the report is due; and provided further that the director of the department of commerce and consumer affairs shall deposit all assessments to the general fund.

### GOVERNMENT-WIDE SUPPORT

SECTION 69. Provided that of the general fund appropriation for the office of the governor (GOV 100), the sum of \$15,000 in fiscal year 2005-2006 and the sum of \$15,000 in fiscal year 2006-2007 shall be used for the governor's "contingent fund" pursuant to section 37-71(f) Hawaii Revised Statutes; provided further that the funds may be transferred to other programs and agencies and allotted, with the approval of the governor, to meet contingencies as they arise; and provided further that the office of the governor shall submit a report on all expenditures made from the "contingency fund" for the preceding twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.

SECTION 70. Provided that of the general fund and inter-departmental transfer funds appropriated for program planning, analysis, and budgeting (BUF 101), the sums of \$360,660,067 and \$381,397,309, respectively for fiscal year 2005-2006 and fiscal year 2006-2007, shall be expended for the state employers share of health premiums for active employees and retirees and employer administration costs to implement the VEBA; provided further that the Hawaii employer-union health benefits trust fund shall only contract for and offer health benefit and insurance plans that satisfy the objectives of chapter 87A, Hawaii Revised Statutes; provided further that the total aggregate cost of plans contracted for and offered to state active employees and retirees in fiscal year 2005-2006 and fiscal year 2006-2007 shall not exceed the total aggregate amount appropriated for the state employers' share of that fiscal year adjusted for active and retiree enrollment levels; and provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the general fund.

**SECTION 71.** Provided that of the general fund appropriation for program, planning, analysis, and budgeting (BUF 101), the sum of \$570,789 for fiscal year 2005-2006 and \$570,789 for fiscal year 2006-2007 shall be expended as a subsidy to the Bishop Museum; provided further that any unexpended funds for this purpose shall lapse to the general fund.

**SECTION 72.** Provided that of the appropriations or authorizations for departmental administration and budget division (BUF 101), the sum of \$1,581,331 in general funds, \$30,957 in federal funds, and \$899 in other funds for fiscal year 2005-2006 and the same amount for fiscal year 2006-2007 shall be allotted by the director of finance to the appropriate state department in each respective fiscal year to fund the costs in the August 17, 2004 agreement with the exclusive bargaining representative of collective bargaining unit 10.

**SECTION 73.** Provided that of the general fund appropriation for the office of elections (AGS 879), the sum of \$372,340 for fiscal year 2005-2006 shall be expended to comply with the Help America Vote Act; provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.

**SECTION 74.** Provided that of the general fund appropriation for financial administration (BUF 115), the sum of \$231,789,298 for fiscal year 2005-2006 and the sum of \$260,110,764 for fiscal year 2006-2007 shall be used to pay for interest and principal on general obligation bonds; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the general fund; provided further that the department of budget and finance shall submit a detailed report comparing general fund appropriations to actual general fund expenditures for the non-department of education and non-university of Hawaii share of general obligation bond debt service for each fiscal year from the 2001-2002 fiscal year through the last completed fiscal year, and compare appropriations to a projection for the fiscal year in which the report is to be submitted; and provided further that this report shall be submitted no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.

**SECTION 75.** Provided that of the general fund appropriation for legal services (ATG 100), the sum of \$67,761 for fiscal year 2005-2006 and \$67,761 for fiscal year 2006-2007 shall be expended by the department of the attorney general for the purposes of establishing a cold case unit; provided further that the funds for the cold case unit shall not be provided unless matched by at least \$200,000 in federal funds in fiscal year 2005-2006 and \$200,000 in fiscal year 2006-2007; provided further that the department of the attorney general shall submit a report on the activities, progress, and expenditures of the cold case unit as required by the Byrne Grant; provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2006 and 2007 sessions; provided further that the department shall be assessed a fee of \$10,000 for each business day beyond the date that the report is due; and provided further that the attorney general shall deposit all assessments to the general fund.

**SECTION 76.** Provided that of the revolving fund appropriation for legal services (ATG 100), the sum of \$100,000 for fiscal year 2005-2006 may be expended from the criminal forfeiture revolving fund for the purposes of the drug nuisance abatement unit; provided further that the department of the attorney general shall provide a report of the drug nuisance abatement unit outlining priorities, projected expenditures, possible alternative sources of funding, actions taken, and

unit performance; provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2006 session; provided further that the department shall be assessed a fee of \$10,000 for each business day beyond the date that the report is due; and provided further that the attorney general shall deposit all assessments to the general fund.

SECTION 77. Provided that of the general fund appropriation for legal services (ATG 100), the sum of \$4,000 for fiscal year 2005-2006 shall be used to reimburse the life members of the commission to promote uniform legislation currently residing in Hawaii for travel expenses to attend national meetings.

SECTION 78. Provided that of the general fund appropriation for information processing services (AGS 131), the sum of \$100,000 for fiscal year 2005-2006 shall be expended to contract a consultant to prepare and submit a detailed report to evaluate and analyze all viable options and alternatives to the creation of a statewide computer disaster recovery site; provided further that the report shall include findings and substantive recommendations of the fiscal, business, and economic impacts upon the State if a site is not provided; provided further that the report shall consider the viability of public-private partnerships between the state and private companies interested in utilizing the computer disaster recovery site; and provided further that information processing services shall submit its findings and recommendations in a detailed report to the legislature no later than twenty days prior to the convening of the 2006 session; provided further that the department shall be assessed a fee of \$10,000 for each business day beyond the date that the report is due; and provided further that the comptroller shall deposit all assessments to the general fund.

SECTION 79. Provided that of the general fund appropriation for work force attraction, selection, classification, and efficiency (HRD 102), the sum of \$1,021,620 for fiscal year 2005-2006 and the sum of \$1,021,620 for fiscal year 2006-2007 shall be expended for unemployment compensation claims of former state employees; provided further that any unrequired and unexpended funds appropriated for this purpose may be expended to meet current workers' compensation claims.

SECTION 80. Provided that of the general fund appropriation for work force attraction, selection, classification, and efficiency (HRD 102), the sum of \$7,989,622 for fiscal year 2005-2006 and the sum of \$7,989,622 for fiscal year 2006-2007 shall be expended for workers' compensation claims; provided further that the department of human resources development shall submit a detailed report each year of all expenditures, including the number of claims for workers' compensation claim payments, statistics on the duration of payments made to claimants, statistics on the average compensation paid per claimant, and a breakdown of the claims paid by department; provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions; provided further that the department shall be assessed a fee of \$10,000 for each business day beyond the date that the report is due; and provided further that the director of the department of human resource development shall deposit all assessments to the general fund.

SECTION 81. Provided that of the general fund appropriation for retirement (BUF 141), the sum of \$130,974,883 for fiscal year 2005-2006 and the sum of \$132,913,312 for fiscal year 2006-2007 shall be expended for the employees' retirement system's pension accumulation; provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.

SECTION 82. Provided that of the interdepartmental transfer appropriation for retirement (BUF 141), the sum of \$181,827,740 for fiscal year 2005-2006 and the sum of \$185,398,117 for fiscal year 2006-2007 shall be expended for the university of Hawaii and department of education's employees' retirement system's pension accumulation; provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.

SECTION 83. Provided that of the general fund appropriation for the department of budget and finance, retirement (BUF 141), the sum of \$70,920,738 for fiscal year 2005-2006 and the sum of \$74,168,319 for fiscal year 2006-2007 shall be expended for the employer's share of the social security/medicare payment for employees; provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.

SECTION 84. Provided that of the interdepartmental transfer appropriation for retirement (BUF 141), the sum of \$102,055,660 for fiscal year 2005-2006 and the sum of \$106,728,959 for fiscal year 2006-2007 shall be expended for the university of Hawaii and department of education's employer's share of the social security/medicare payment; provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.

**PART IV. CAPITAL IMPROVEMENT PROJECTS**

SECTION 85. CAPITAL IMPROVEMENT PROJECTS AUTHORIZED. The sums of money appropriated or authorized in part II of this Act for capital improvements shall be expended for the projects listed below. Accounting of the appropriations by the department of accounting and general services shall be based on the projects listed in this section. Several related or similar projects may be combined into a single project if such combination is advantageous or convenient for implementation; and provided further that the total cost of the projects thus combined shall not exceed the total of the sum specified for the projects separately. (The amount after each cost element and the total funding for each project listed in this part are in thousands of dollars.)

**CAPITAL IMPROVEMENT PROJECTS**

| ITEM NO. | CAPITAL PROJECT NO. | TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |       |
|----------|---------------------|-------|------------------|---------------------------|-------|---------------------|-------|
|          |                     |       |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F |

**A. ECONOMIC DEVELOPMENT**

**BED100 - STRATEGIC MARKETING & SUPPORT**

- 1. WAIPAHAU COMMUNITY ASSOCIATION, OAHU

CONSTRUCTION FOR IMPROVEMENTS FOR THE WAIPAHAU BUSINESS INCUBATOR AND TRAINING CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

|               |     |      |   |
|---------------|-----|------|---|
| CONSTRUCTION  |     | 300  |   |
| TOTAL FUNDING | BED | 300C | C |

## CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.   | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |       |
|--|---------------------|---|------------------|---------------------------|-------|---------------------|-------|
|  |                     |   |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F |
| <b>BED142 - GENERAL SUPPORT FOR ECONOMIC DEVELOPMENT</b> |                     |   |                  |                           |       |                     |       |
| 2.   |                     | HONOLULU ZOO SOCIETY, OAHU  |                  |                           |       |                     |       |
|  |                     | CONSTRUCTION FOR DEVELOPMENT OF THE EDUCATION/DISCOVERY ZONE AND HAWAIIAN ISLANDS EXHIBIT. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.   |                  |                           |       |                     |       |
|  |                     | CONSTRUCTION  |                  |                           |       | 200                 |       |
|  |                     | TOTAL FUNDING   | BED              |                           |       | 200C                | C     |
| <b>AGR141 - AGRICULTURAL RESOURCE MANAGEMENT</b>         |                     |   |                  |                           |       |                     |       |
| 3.   |                     | HA06002 WAIMEA IRRIGATION SYSTEM IMPROVEMENTS, HAWAII   |                  |                           |       |                     |       |
|  |                     | PLANS, DESIGN, AND CONSTRUCTION FOR INFRASTRUCTURE IMPROVEMENTS TO THE WAIMEA IRRIGATION SYSTEM.  |                  |                           |       |                     |       |
|  |                     | PLANS   |                  |                           |       | 1                   |       |
|  |                     | DESIGN  |                  |                           |       | 39                  |       |
|  |                     | CONSTRUCTION  |                  |                           |       | 310                 |       |
|  |                     | TOTAL FUNDING   | AGR              |                           |       | 350C                | C     |
| 4.   |                     | 200402 MOLOKAI IRRIGATION SYSTEM IMPROVEMENTS, MOLOKAI  |                  |                           |       |                     |       |
|  |                     | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS TO THE MOLOKAI IRRIGATION SYSTEM.   |                  |                           |       |                     |       |
|  |                     | PLANS   |                  |                           |       | 50                  |       |
|  |                     | DESIGN  |                  |                           |       | 250                 |       |
|  |                     | CONSTRUCTION  |                  |                           |       | 449                 |       |
|  |                     | EQUIPMENT   |                  |                           |       | 1                   |       |
|  |                     | TOTAL FUNDING   | AGR              |                           |       | 750C                | C     |
| 5.   |                     | UPCOUNTRY MAUI WATERSHED, MAUI  |                  |                           |       |                     |       |
|  |                     | PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INSTALLATION OF PIPELINE FOR THE UPCOUNTRY MAUI WATERSHED PROJECT, KULA, MAUI.   |                  |                           |       |                     |       |
|  |                     | PLANS   |                  |                           |       | 10                  |       |
|  |                     | LAND  |                  |                           |       | 100                 |       |
|  |                     | DESIGN  |                  |                           |       | 100                 |       |
|  |                     | CONSTRUCTION  |                  |                           |       | 1,280               |       |
|  |                     | EQUIPMENT   |                  |                           |       | 10                  |       |
|  |                     | TOTAL FUNDING   | AGR              |                           |       | 1,500C              | C     |
| 6.   |                     | LOWER HAMAKUA DITCH SYSTEM, HAWAII  |                  |                           |       |                     |       |
|  |                     | PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO THE LOWER HAMAKUA DITCH SYSTEM, TOGETHER WITH APPURTENANT WORKS, INCLUDING IMPROVEMENTS TO MITIGATE FLOOD DAMAGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |                  |                           |       |                     |       |
|  |                     | PLANS   |                  |                           |       | 1                   |       |
|  |                     | DESIGN  |                  |                           |       | 499                 |       |
|  |                     | CONSTRUCTION  |                  |                           |       | 3,500               |       |
|  |                     | TOTAL FUNDING   | AGR              |                           |       | 1,000C              | C     |
|  |                     |   | AGR              |                           |       | 3,000N              | N     |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.   | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |        |
|--|---------------------|---|------------------|---------------------------|-------|---------------------|--------|
|  |                     |   |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F  |
| <b>LNR141 - WATER AND LAND DEVELOPMENT</b>             |                     |   |                  |                           |       |                     |        |
| 7.   | G83F                | ALA WAI WATERSHED FLOOD STUDY, OAHU   |                  |                           |       |                     |        |
|  |                     | PLANS TO INVESTIGATE CONDITIONS AND MITIGATIVE MEASURES TO ALLEVIATE FLOODING IN THE ALA WAI WATERSHED, INCLUDING THE UPPER REACHES OF MAKIKI, MANOA, AND PALOLO VALLEYS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.   |                  |                           |       |                     |        |
|  |                     |   |                  | 2,400                     |       |                     |        |
|  |                     | TOTAL FUNDING   | LNR              | 600C                      |       |                     | C      |
|  |                     |   | LNR              | 1,200N                    |       |                     | N      |
|  |                     |   | LNR              | 600S                      |       |                     | S      |
| 8.   |                     | NORTH SHORE WASTEWATER TREATMENT PLANT, OAHU  |                  |                           |       |                     |        |
|  |                     | PLANS FOR STUDIES TO DETERMINE LOCATION AND TREATMENT ALTERNATIVES SUPPORTED BY THE COMMUNITY, METHODS OF ALLEVIATING CESSPOOL LEACHING, AND OTHER RELEVANT ISSUES.   |                  |                           |       |                     |        |
|  |                     |   |                  | 250                       |       |                     |        |
|  |                     | TOTAL FUNDING   | LNR              | 250C                      |       |                     | C      |
| <b>BED150 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY</b> |                     |   |                  |                           |       |                     |        |
| 9.   | KA008               | KAKAAKO MAKAI IMPROVEMENTS, OAHU  |                  |                           |       |                     |        |
|  |                     | PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION TO IMPROVE INFRASTRUCTURE AND FOR RELOCATION OF EXISTING TENANTS TO PREPARE SITES FOR FUTURE DEVELOPMENT IN KAKAAKO MAKAI. PROJECT MAY INCLUDE IMPROVEMENTS TO THE ROADWAY AND UTILITY SYSTEMS.   |                  |                           |       |                     |        |
|  |                     |   |                  |                           |       |                     | 1      |
|  |                     |   |                  |                           |       |                     | 248    |
|  |                     |   |                  |                           |       |                     | 750    |
|  |                     |   |                  |                           |       |                     | 1      |
|  |                     | TOTAL FUNDING   | BED              |                           | C     |                     | 1,000C |
| 10.  | HCD001              | KAKAAKO COMMUNITY DEVELOPMENT DISTRICT, OAHU  |                  |                           |       |                     |        |
|  |                     | PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT AND NON-PERMANENT PROJECT-FUNDED STAFF POSITIONS FOR IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY'S KAKAAKO COMMUNITY DEVELOPMENT DISTRICT. FUNDS MAY BE USED TO MATCH FEDERAL AND NON-STATE FUNDS AS MAY BE AVAILABLE. |                  |                           |       |                     |        |
|  |                     |   |                  | 1,603                     |       |                     | 1,603  |
|  |                     | TOTAL FUNDING   | BED              | 1,603C                    |       |                     | 1,603C |



## CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.                                     | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |       |
|--|---------------------|--|------------------|---------------------------|-------|---------------------|-------|
|  |                     |  |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F |
| 11.  | KA014               | KEWALO BASIN PARK IMPROVEMENTS, OAHU   |                  |                           |       |                     |       |
|  |                     | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR INFRASTRUCTURE IMPROVEMENTS AND SITE PREPARATION AND DEVELOPMENT FOR THE SITE CURRENTLY OCCUPIED BY THE UNIVERSITY OF HAWAII, KEWALO BASIN MARINE MAMMAL LABORATORY, AND FOR PARK IMPROVEMENTS, AS NEEDED.    |                  |                           |       |                     |       |
|  |                     | PLANS  |                  |                           | 1     |                     |       |
|  |                     | DESIGN   |                  |                           | 100   |                     |       |
|  |                     | CONSTRUCTION   |                  |                           | 898   |                     |       |
|  |                     | EQUIPMENT  |                  |                           | 1     |                     |       |
|  |                     | TOTAL FUNDING  | BED              |                           | 1,000 | C                   |       |
| 12.  |                     | TRAFFIC STUDY, OAHU  |                  |                           |       |                     |       |
|  |                     | PLANS FOR TRAFFIC STUDIES TO DEVELOP TRAFFIC MITIGATION ALTERNATIVES IN THE AREAS OF MAKIKI, PUNCHBOWL, ALA MOANA, AND MCCULLY; AND ALTERNATIVES TO ALLEVIATE CONGESTION IN THE MAUKA-MAKAI DIRECTIONS THAT WILL TAKE COMMUNITY CONCERNS INTO CONSIDERATION. |                  |                           |       |                     |       |
|  |                     | PLANS  |                  |                           | 500   |                     |       |
|  |                     | TOTAL FUNDING  | BED              |                           | 500   | C                   |       |
| <b>B. EMPLOYMENT</b>                         |                     |  |                  |                           |       |                     |       |
| <b>LBR903 - OFFICE OF COMMUNITY SERVICES</b> |                     |  |                  |                           |       |                     |       |
| 1.   |                     | EASTER SEALS HAWAII, OAHU  |                  |                           |       |                     |       |
|  |                     | CONSTRUCTION FOR A FULL SERVICE CENTER FOR EARLY INTERVENTION, YOUTH, AND ADULT PROGRAMS. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.   |                  |                           |       |                     |       |
|  |                     | CONSTRUCTION   |                  |                           | 1,000 |                     |       |
|  |                     | TOTAL FUNDING  | LBR              |                           | 1,000 | C                   |       |
| 2.   |                     | HAWAII COUNTY ECONOMIC OPPORTUNITY COUNCIL, HAWAII   |                  |                           |       |                     |       |
|  |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS AND EQUIPMENT TO ENHANCE HAWAII COUNTY ECONOMIC OPPORTUNITY COUNCIL PROGRAMS. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.  |                  |                           |       |                     |       |
|  |                     | DESIGN   |                  |                           | 1     |                     |       |
|  |                     | CONSTRUCTION   |                  |                           | 1     |                     |       |
|  |                     | EQUIPMENT  |                  |                           | 598   |                     |       |
|  |                     | TOTAL FUNDING  | LBR              |                           | 600   | C                   |       |
| 3.   |                     | HONOLULU COMMUNITY ACTION PROGRAM, OAHU  |                  |                           |       |                     |       |
|  |                     | LAND ACQUISITION TO ACQUIRE A FACILITY FOR AN ADMINISTRATIVE HEADQUARTERS AND RELATED COMMUNITY PROGRAMS FOR THE HONOLULU COMMUNITY ACTION PROGRAM.  |                  |                           |       |                     |       |
|  |                     | LAND   |                  |                           | 1,000 |                     |       |
|  |                     | TOTAL FUNDING  | LBR              |                           | 1,000 | C                   |       |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |       |
|----------|---------------------|---|------------------|---------------------------|-------|---------------------|-------|
|          |                     |   |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F |
| 4.       |                     | ORI ANUENUE HALE, INC., OAHU  |                  |                           |       |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR A COMMUNITY SERVICE FACILITY IN CENTRAL OAHU. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.        |                  |                           |       |                     |       |
|          |                     | DESIGN  |                  | 100                       |       |                     |       |
|          |                     | CONSTRUCTION  |                  | 2,400                     |       |                     |       |
|          |                     | TOTAL FUNDING   | LBR              | 2,500C                    |       |                     | C     |
| 5.       |                     | SEAGULL SCHOOLS, INC., OAHU   |                  |                           |       |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR PRESCHOOL CLASSROOMS AT MAUNAWILI ELEMENTARY SCHOOL. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS. |                  |                           |       |                     |       |
|          |                     | DESIGN  |                  | 40                        |       |                     |       |
|          |                     | CONSTRUCTION  |                  | 260                       |       |                     |       |
|          |                     | TOTAL FUNDING   | LBR              | 300C                      |       |                     | C     |
| 6.       |                     | YMCA OF HONOLULU, OAHU  |                  |                           |       |                     |       |
|          |                     | CONSTRUCTION FOR THE LEEWARD YMCA TO HOUSE COMMUNITY PROGRAMS. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.                   |                  |                           |       |                     |       |
|          |                     | CONSTRUCTION  |                  | 500                       |       |                     |       |
|          |                     | TOTAL FUNDING   | LBR              | 500C                      |       |                     | C     |

C. TRANSPORTATION FACILITIES

TRN102 - HONOLULU INTERNATIONAL AIRPORT

|    |      |  |     |        |  |        |   |
|----|------|--|-----|--------|--|--------|---|
| 1. | A04A | HONOLULU INTERNATIONAL AIRPORT, ENVIRONMENTAL IMPACT STATEMENT, OAHU   |     |        |  |        |   |
|    |      | PLANS FOR AN ENVIRONMENTAL IMPACT STATEMENT FOR HONOLULU INTERNATIONAL AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.  |     |        |  |        |   |
|    |      | PLANS  |     | 1,500  |  |        |   |
|    |      | TOTAL FUNDING  | TRN | 375B   |  |        | B |
|    |      |  | TRN | 1,125N |  |        | N |
| 2. | A20B | HONOLULU INTERNATIONAL AIRPORT, 3RD LEVEL STEEL CANOPY IMPROVEMENTS, OAHU  |     |        |  |        |   |
|    |      | DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF THE EXISTING STRUCTURAL STEEL CANOPY ON THE THIRD LEVEL OF THE OVERSEAS TERMINAL. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |     |        |  |        |   |
|    |      | DESIGN   |     | 500    |  |        |   |
|    |      | CONSTRUCTION   |     |        |  | 3,000  |   |
|    |      | TOTAL FUNDING  | TRN | 150B   |  | 900B   |   |
|    |      |  | TRN | 350N   |  | 2,100N |   |

## CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |       |
|----------|---------------------|---|------------------|---------------------------|-------|---------------------|-------|
|          |                     |   |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F |
| 3.       | A26A                | HONOLULU INTERNATIONAL AIRPORT, ENVIRONMENTAL COMPLIANCE MEASURES, OAHU   |                  |                           |       |                     |       |
|          |                     | CONSTRUCTION FOR ENVIRONMENTAL COMPLIANCE AT HONOLULU INTERNATIONAL AIRPORT.  |                  |                           |       |                     |       |
|          |                     | CONSTRUCTION  |                  | 2,070                     |       |                     |       |
|          |                     | TOTAL FUNDING   | TRN              | 345B                      |       |                     | B     |
|          |                     |   | TRN              | 1,725X                    |       |                     | X     |
| 4.       | A29A                | HONOLULU INTERNATIONAL AIRPORT, AIR CONDITIONING SYSTEM IMPROVEMENTS, OAHU  |                  |                           |       |                     |       |
|          |                     | CONSTRUCTION FOR A REPLACEMENT OF THE AIRPORT CHILLER PLANT, CHILLED WATER LOOP, AND OTHER RELATED IMPROVEMENTS IN THE OVERSEAS TERMINAL OF HONOLULU INTERNATIONAL AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.           |                  |                           |       |                     |       |
|          |                     | CONSTRUCTION  |                  | 30,195                    |       |                     |       |
|          |                     | TOTAL FUNDING   | TRN              | 1,100B                    |       |                     | B     |
|          |                     |   | TRN              | 3,795N                    |       |                     | N     |
|          |                     |   | TRN              | 25,300X                   |       |                     | X     |
| 5.       | A41N                | HONOLULU INTERNATIONAL AIRPORT, TERMINAL MODERNIZATION, OAHU  |                  |                           |       |                     |       |
|          |                     | PLANS AND DESIGN OF TERMINAL IMPROVEMENTS TO OPTIMIZE AND MODERNIZE FACILITIES AND OPERATIONS AT THE AIRPORT.   |                  |                           |       |                     |       |
|          |                     | PLANS   |                  | 1,000                     |       |                     |       |
|          |                     | DESIGN  |                  |                           |       | 7,000               |       |
|          |                     | TOTAL FUNDING   | TRN              | 1,000B                    |       | 7,000B              |       |
| 6.       | A41O                | HONOLULU INTERNATIONAL AIRPORT, TERMINAL ROOF AND CEILING REPLACEMENT, OAHU   |                  |                           |       |                     |       |
|          |                     | DESIGN AND CONSTRUCTION OF TERMINAL ROOF AND CEILING REPLACEMENT INCLUDING ASBESTOS REMOVAL, DRAINAGE IMPROVEMENTS, AND OTHER RELATED IMPROVEMENTS AT HONOLULU INTERNATIONAL AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |                  |                           |       |                     |       |
|          |                     | DESIGN  |                  | 1,876                     |       |                     |       |
|          |                     | CONSTRUCTION  |                  |                           |       | 9,380               |       |
|          |                     | TOTAL FUNDING   | TRN              | 469B                      |       | 2,345B              |       |
|          |                     |   | TRN              | 1,407N                    |       | 7,035N              |       |
| 7.       | A41P                | HONOLULU INTERNATIONAL AIRPORT, INTERNATIONAL ARRIVALS BUILDING CEILING REPLACEMENT, OAHU   |                  |                           |       |                     |       |
|          |                     | CONSTRUCTION OF CEILING REPLACEMENT INCLUDING ASBESTOS REMOVAL AND OTHER RELATED IMPROVEMENTS IN THE INTERNATIONAL ARRIVALS BUILDING. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY   |                  |                           |       |                     |       |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |       |
|----------|---------------------|--|------------------|---------------------------|-------|---------------------|-------|
|          |                     |  |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F |
|          |                     | FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.  |                  |                           |       |                     |       |
|          |                     | CONSTRUCTION   |                  | 4,420                     |       |                     |       |
|          |                     | TOTAL FUNDING  | TRN              | 1,200B                    |       |                     | B     |
|          |                     |  | TRN              | 3,220N                    |       |                     | N     |
| 8.       | A43F                | HONOLULU INTERNATIONAL AIRPORT, INTERISLAND MAINTENANCE FACILITY SITE PREPARATION, OAHU  |                  |                           |       |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR SITE PREPARATION (GRADING, ACCESS, AND UTILITIES) AND APRON NEEDED FOR A MAINTENANCE FACILITY AT THE NORTH RAMP.   |                  |                           |       |                     |       |
|          |                     | DESIGN   |                  | 800                       |       |                     |       |
|          |                     | CONSTRUCTION   |                  | 250                       |       | 8,900               |       |
|          |                     | TOTAL FUNDING  | TRN              | 1,050B                    |       | 8,900B              |       |
| 9.       | A44A                | HONOLULU INTERNATIONAL AIRPORT, FIDS AND PA SYSTEM IMPROVEMENTS, OAHU  |                  |                           |       |                     |       |
|          |                     | CONSTRUCTION FOR REPLACEMENT AND UPGRADES TO THE FLIGHT INFORMATION DISPLAY SYSTEM (FIDS), PUBLIC ADDRESS SYSTEM (PA) AND VISUAL INFORMATION DISPLAY SYSTEM (VIDS) IN THE OVERSEAS TERMINAL (OST), INTERISLAND TERMINAL (IIT) AND THE COMMUTER TERMINAL. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |                  |                           |       |                     |       |
|          |                     | CONSTRUCTION   |                  | 10,638                    |       |                     |       |
|          |                     | TOTAL FUNDING  | TRN              | 390B                      |       |                     | B     |
|          |                     |  | TRN              | 1,335N                    |       |                     | N     |
|          |                     |  | TRN              | 8,913X                    |       |                     | X     |

TRN104 - GENERAL AVIATION

10. A71C KALAELOA AIRPORT, FACILITY IMPROVEMENTS, OAHU

DESIGN AND CONSTRUCTION FOR KALAELOA AIRPORT FACILITY IMPROVEMENTS INCLUDING LEASE LOTS, APRONS, RUNWAYS, TAXIWAYS, AND AVIATION FACILITIES SUCH AS THE CONTROL TOWER, AIRPORT RESCUE FIRE FIGHTING (ARFF) BUILDING, T-HANGAR, AVIATION FUEL SYSTEM, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

|               |     |      |  |        |
|---------------|-----|------|--|--------|
| DESIGN        |     | 800  |  |        |
| CONSTRUCTION  |     |      |  | 4,570  |
| TOTAL FUNDING | TRN | 40B  |  | 200B   |
|               | TRN | 760N |  | 4,370N |

11. A71D KALAELOA AIRPORT, HANGAR 110 RENOVATIONS, OAHU

CONSTRUCTION FOR UPGRADING THE INFRASTRUCTURE TO HANGAR 110 TO MEET CURRENT BUILDING AND FIRE CODES INCLUDING COMPLIANCE WITH THE AMERICANS

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.  | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |        |
|---|---------------------|--|------------------|---------------------------|-------|---------------------|--------|
|   |                     |  |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F  |
|   |                     | WITH DISABILITIES ACT (ADA) AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.  |                  |                           |       |                     |        |
|   |                     | CONSTRUCTION   |                  | 2,082                     |       |                     |        |
|   |                     | TOTAL FUNDING  | TRN              | 182B                      |       |                     | B      |
|   |                     |  | TRN              | 1,900N                    |       |                     | N      |
| 12.   | A71E                | KALAELOA AIRPORT, UTILITY SYSTEM IMPROVEMENTS, OAHU  |                  |                           |       |                     |        |
|   |                     | CONSTRUCTION FOR UPGRADING THE UTILITY INFRASTRUCTURE SYSTEM TO INCLUDE WATER, ELECTRICAL AND TELEPHONE DISTRIBUTION, AND SEWER AND STORM WATER SYSTEMS TO MEET CURRENT CIVIL AIRPORT STANDARDS AND CITY AND COUNTY OF HONOLULU STANDARDS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |                  |                           |       |                     |        |
|   |                     | CONSTRUCTION   |                  | 3,940                     |       |                     |        |
|   |                     | TOTAL FUNDING  | TRN              | 315B                      |       |                     | B      |
|   |                     |  | TRN              | 3,625N                    |       |                     | N      |
| <b>TRN111 - HILO INTERNATIONAL AIRPORT</b>            |                     |  |                  |                           |       |                     |        |
| 13.   | B10T                | HILO INTERNATIONAL AIRPORT, RECONSTRUCT T-HANGARS, HAWAII  |                  |                           |       |                     |        |
|   |                     | CONSTRUCTION FOR THE DEMOLITION OF EXISTING T-HANGARS AND RECONSTRUCTION OF NEW T-HANGARS.   |                  |                           |       |                     |        |
|   |                     | CONSTRUCTION   |                  |                           |       | 1,250               |        |
|   |                     | TOTAL FUNDING  | TRN              |                           | B     | 1,250B              |        |
| <b>TRN114 - KONA INTERNATIONAL AIRPORT AT KEAHOLE</b> |                     |  |                  |                           |       |                     |        |
| 14.   | C03R                | KONA INTERNATIONAL AIRPORT AT KEAHOLE, TERMINAL MODIFICATIONS, HAWAII  |                  |                           |       |                     |        |
|   |                     | PLANS AND DESIGN FOR A TERMINAL EXPANSION STUDY TO INCORPORATE TSA REQUIREMENTS AND A NEW OVERSEAS TERMINAL, AND TERMINAL MODIFICATIONS.   |                  |                           |       |                     |        |
|   |                     | PLANS DESIGN   |                  | 1,000                     |       |                     |        |
|   |                     | TOTAL FUNDING  | TRN              | 1,000B                    |       |                     | 3,000  |
|   |                     |  |                  |                           |       |                     | 3,000B |
| 15.   | C10A                | KONA INTERNATIONAL AIRPORT AT KEAHOLE, PERIMETER ROAD, SECURITY FENCE AND GENERAL AVIATION LIGHTING, HAWAII  |                  |                           |       |                     |        |
|   |                     | CONSTRUCTION FOR THE INSTALLATION OF A PERIMETER ROAD, SECURITY FENCING, GENERAL AVIATION (GA) LIGHTING, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.   |                  |                           |       |                     |        |
|   |                     | CONSTRUCTION   |                  | 3,322                     |       |                     |        |
|   |                     | TOTAL FUNDING  | TRN              | 280B                      |       |                     | B      |
|   |                     |  | TRN              | 1,817N                    |       |                     | N      |
|   |                     |  | TRN              | 1,225X                    |       |                     | X      |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.                              | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |       |
|---------------------------------------|---------------------|--|------------------|---------------------------|-------|---------------------|-------|
|                                       |                     |  |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F |
| <b>TRN116 - WAIMEA-KOHALA AIRPORT</b> |                     |  |                  |                           |       |                     |       |
| 16.                                   | C55B                | WAIMEA-KOHALA AIRPORT, PART 139 IMPROVEMENTS, HAWAII   |                  |                           |       |                     |       |
|                                       |                     | PLANS, DESIGN, AND CONSTRUCTION FOR AN ENVIRONMENTAL ASSESSMENT AND PART 139 COMPLIANCE IMPROVEMENTS TO AIRCRAFT RESCUE AND FIRE FIGHTING (ARFF) STATION, PERIMETER FENCING, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.     |                  |                           |       |                     |       |
|                                       |                     |  |                  | 220                       |       |                     |       |
|                                       |                     |  |                  | 495                       |       |                     |       |
|                                       |                     |  |                  |                           |       | 3,500               |       |
|                                       |                     |  | TRN              | 56B                       |       | 300B                |       |
|                                       |                     |  | TRN              | 659N                      |       | 3,200N              |       |
| <b>TRN131 - KAHULUI AIRPORT</b>       |                     |  |                  |                           |       |                     |       |
| 17.                                   | D04M                | KAHULUI AIRPORT, ACCESS ROAD, MAUI   |                  |                           |       |                     |       |
|                                       |                     | DESIGN AND CONSTRUCTION FOR A NEW ACCESS ROAD TO THE AIRPORT FROM HANA HIGHWAY. IMPROVEMENTS INCLUDE SITE WORK, PAVING, ELECTRICAL, DRAINAGE, UTILITIES, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.                         |                  |                           |       |                     |       |
|                                       |                     |  |                  | 1,335                     |       |                     |       |
|                                       |                     |  |                  |                           |       | 16,750              |       |
|                                       |                     |  | TRN              | 300B                      |       | 3,750B              |       |
|                                       |                     |  | TRN              | 1,035N                    |       | 13,000N             |       |
| 18.                                   | D05A                | KAHULUI AIRPORT, RUNWAY SAFETY AREA IMPROVEMENTS, MAUI   |                  |                           |       |                     |       |
|                                       |                     | CONSTRUCTION OF THE RUNWAY SAFETY AREA IMPROVEMENTS INCLUDING SITE WORK, INSTALLATION OF A DRAINAGE SYSTEM, CONSTRUCTION OF A NEW SERVICE ROAD, RELOCATION OF PERIMETER FENCING, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |                  |                           |       |                     |       |
|                                       |                     |  |                  | 10,294                    |       |                     |       |
|                                       |                     |  |                  |                           |       |                     |       |
|                                       |                     |  | TRN              | 375 B                     |       |                     | B     |
|                                       |                     |  | TRN              | 1,294 N                   |       |                     | N     |
|                                       |                     |  | TRN              | 8,625 X                   |       |                     | X     |
| 19.                                   | D06A                | KAHULUI AIRPORT, NOISE MONITORING SYSTEM, MAUI   |                  |                           |       |                     |       |
|                                       |                     | PLANS FOR NOISE MONITORING SYSTEM AT KAHULUI AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.  |                  |                           |       |                     |       |
|                                       |                     |  |                  |                           |       | 400                 |       |
|                                       |                     |  | TRN              |                           | B     | 100B                |       |
|                                       |                     |  | TRN              |                           | N     | 300N                |       |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.                        | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |        |                     |        |
|---------------------------------|---------------------|---|------------------|---------------------------|--------|---------------------|--------|
|                                 |                     |   |                  | FISCAL YEAR 2005-06       | M O F  | FISCAL YEAR 2006-07 | M O F  |
| 20.                             | D08I                | KAHULUI AIRPORT, PERIMETER ROAD IMPROVEMENTS, MAUI  |                  |                           |        |                     |        |
|                                 |                     | CONSTRUCTION OF PERIMETER ROAD, SECURITY FENCE, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.   |                  |                           |        |                     |        |
|                                 |                     | CONSTRUCTION  |                  |                           | 1,668  |                     |        |
|                                 |                     | TOTAL FUNDING   | TRN              |                           | 1,668X |                     | X      |
| 21.                             | D08K                | KAHULUI AIRPORT, FUEL STORAGE SITE PREPARATION, MAUI  |                  |                           |        |                     |        |
|                                 |                     | CONSTRUCTION FOR THE SITE PREPARATION OF A FUEL STORAGE TANK FARM. SITE WORK TO INCLUDE EXCAVATION, CLEARING AND GRUBBING, ACCESS ROAD AND UTILITIES, AND OTHER RELATED IMPROVEMENTS.   |                  |                           |        |                     |        |
|                                 |                     | CONSTRUCTION  |                  |                           | 2,000  |                     |        |
|                                 |                     | TOTAL FUNDING   | TRN              |                           | 2,000B |                     | B      |
| 22.                             | D08M                | KAHULUI AIRPORT, HELIPORT IMPROVEMENTS, MAUI  |                  |                           |        |                     |        |
|                                 |                     | PLANS, DESIGN, AND CONSTRUCTION FOR HELIPORT IMPROVEMENTS.  |                  |                           |        |                     |        |
|                                 |                     | PLANS   |                  |                           | 500    |                     |        |
|                                 |                     | DESIGN  |                  |                           | 500    |                     |        |
|                                 |                     | CONSTRUCTION  |                  |                           |        |                     | 3,600  |
|                                 |                     | TOTAL FUNDING   | TRN              |                           | 1,000B |                     | 3,600B |
| <b>TRN133 - HANA AIRPORT</b>    |                     |   |                  |                           |        |                     |        |
| 23.                             | D20B                | HANA AIRPORT, PART 139 IMPROVEMENTS, MAUI   |                  |                           |        |                     |        |
|                                 |                     | PLANS, DESIGN, AND CONSTRUCTION FOR AN ENVIRONMENTAL ASSESSMENT, AND PART 139 COMPLIANCE IMPROVEMENTS TO AIRCRAFT RESCUE AND FIRE FIGHTING (ARFF) STATION, PERIMETER FENCING, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.   |                  |                           |        |                     |        |
|                                 |                     | PLANS   |                  |                           | 220    |                     |        |
|                                 |                     | DESIGN  |                  |                           | 495    |                     |        |
|                                 |                     | CONSTRUCTION  |                  |                           |        |                     | 3,500  |
|                                 |                     | TOTAL FUNDING   | TRN              |                           | 56B    |                     | 300B   |
|                                 |                     |   | TRN              |                           | 659N   |                     | 3,200N |
| <b>TRN141 - MOLOKAI AIRPORT</b> |                     |   |                  |                           |        |                     |        |
| 24.                             | D55B                | MOLOKAI AIRPORT ARFF STATION IMPROVEMENTS, MOLOKAI  |                  |                           |        |                     |        |
|                                 |                     | CONSTRUCTION FOR THE MOLOKAI AIRPORT AIRCRAFT RESCUE AND FIRE FIGHTING (ARFF) STATION IMPROVEMENTS INCLUDING SITE WORK, DEMOLITION, RECONSTRUCTION AND/OR REPLACEMENT OF A BUILDING, UTILITIES, DRIVEWAY WITH A PARKING AREA, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |                  |                           |        |                     |        |
|                                 |                     | CONSTRUCTION  |                  |                           | 2,115  |                     |        |
|                                 |                     | TOTAL FUNDING   | TRN              |                           | 915E   |                     | E      |
|                                 |                     |   | TRN              |                           | 1,200N |                     | N      |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.                          | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |       |
|-----------------------------------|---------------------|---|------------------|---------------------------|-------|---------------------|-------|
|                                   |                     |   |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F |
| 25.                               | D55C                | MOLOKAI AIRPORT, PART 139 CULVERT IMPROVEMENTS, MOLOKAI   |                  |                           |       |                     |       |
|                                   |                     | DESIGN FOR CULVERT IMPROVEMENTS AT MOLOKAI AIRPORT INCLUDING SITE WORK, INSTALLATION OF A DRAINAGE SYSTEM AND BOX CULVERT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.  |                  |                           |       |                     |       |
|                                   |                     | DESIGN  |                  | 220                       |       |                     |       |
|                                   |                     | TOTAL FUNDING   | TRN              | 20B                       |       |                     | B     |
|                                   |                     |   | TRN              | 200N                      |       |                     | N     |
| <b>TRN143 - KALAUPAPA AIRPORT</b> |                     |   |                  |                           |       |                     |       |
| 26.                               | D60A                | KALAUPAPA AIRPORT, PART 139 IMPROVEMENTS, MOLOKAI   |                  |                           |       |                     |       |
|                                   |                     | PLANS, DESIGN, AND CONSTRUCTION FOR AN ENVIRONMENTAL ASSESSMENT AND PART 139 COMPLIANCE IMPROVEMENTS TO AIRCRAFT RESCUE AND FIRE FIGHTING (ARFF) STATION, PERIMETER FENCING, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.  |                  |                           |       |                     |       |
|                                   |                     | PLANS   |                  | 220                       |       |                     |       |
|                                   |                     | DESIGN  |                  | 495                       |       |                     |       |
|                                   |                     | CONSTRUCTION  |                  |                           |       | 3,500               |       |
|                                   |                     | TOTAL FUNDING   | TRN              | 56B                       |       | 300B                |       |
|                                   |                     |   | TRN              | 659N                      |       | 3,200N              |       |
| <b>TRN151 - LANAI AIRPORT</b>     |                     |   |                  |                           |       |                     |       |
| 27.                               | D70D                | LANAI AIRPORT ARFF STATION IMPROVEMENTS, LANAI  |                  |                           |       |                     |       |
|                                   |                     | CONSTRUCTION FOR THE LANAI AIRPORT AIRCRAFT RESCUE AND FIRE FIGHTING (ARFF) STATION IMPROVEMENTS INCLUDING SITE WORK, DEMOLITION, RECONSTRUCTION AND/OR REPLACEMENT OF A BUILDING, UTILITIES, DRIVEWAY WITH A PARKING AREA, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |                  |                           |       |                     |       |
|                                   |                     | CONSTRUCTION  |                  | 1,150                     |       |                     |       |
|                                   |                     | TOTAL FUNDING   | TRN              | 600E                      |       |                     | E     |
|                                   |                     |   | TRN              | 550N                      |       |                     | N     |
| <b>TRN161 - LIHUE AIRPORT</b>     |                     |   |                  |                           |       |                     |       |
| 28.                               | E03M                | LIHUE AIRPORT, PERIMETER ROAD AND SECURITY FENCE, KAUAI   |                  |                           |       |                     |       |
|                                   |                     | CONSTRUCTION OF A PERIMETER ROAD AND AIRFIELD FENCE TO MEET SAFETY AND SECURITY REQUIREMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.   |                  |                           |       |                     |       |
|                                   |                     | CONSTRUCTION  |                  | 4,332                     |       |                     |       |
|                                   |                     | TOTAL FUNDING   | TRN              | 642B                      |       |                     | B     |
|                                   |                     |   | TRN              | 3,320N                    |       |                     | N     |
|                                   |                     |   | TRN              | 370X                      |       |                     | X     |



CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.                                | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |       |
|---|---------------------|--|------------------|---------------------------|-------|---------------------|-------|
|   |                     |  |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F |
| 29.                                     | E03O                | LIHUE AIRPORT, AHUKINI DUMP RESTORATION, KAUAI   |                  |                           |       |                     |       |
|   |                     | CONSTRUCTION FOR THE RESTORATION OF THE AHUKINI DUMP AT LIHUE AIRPORT.   |                  |                           |       |                     |       |
|   |                     | CONSTRUCTION   |                  | 1,200                     |       |                     |       |
|   |                     | TOTAL FUNDING  | TRN              | 1,200B                    |       |                     | B     |
| 30.                                     | E02A                | LIHUE AIRPORT NOISE LAND ACQUISITION, KAUAI  |                  |                           |       |                     |       |
|   |                     | LAND ACQUISITION OF A 173 ACRE PARCEL NORTH OF AHUKINI ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.   |                  |                           |       |                     |       |
|   |                     | LAND   |                  | 17,100                    |       |                     |       |
|   |                     | TOTAL FUNDING  | TRN              | 1,100B                    |       |                     | B     |
|   |                     |  | TRN              | 16,000N                   |       |                     | N     |
| <b>TRN195 - AIRPORTS ADMINISTRATION</b> |                     |  |                  |                           |       |                     |       |
| 31.                                     | F04J                | AIRPORT PLANNING STUDY, STATEWIDE  |                  |                           |       |                     |       |
|   |                     | PLANS FOR AIRPORT IMPROVEMENTS, ECONOMIC STUDIES, RESEARCH, NOISE MONITORING STUDIES, NOISE COMPATIBILITY STUDIES, AND ADVANCE PLANNING OF FEDERAL AID AND NON-FEDERAL AID PROJECTS.   |                  |                           |       |                     |       |
|   |                     | PLANS  |                  | 1,000                     |       | 1,000               |       |
|   |                     | TOTAL FUNDING  | TRN              | 1,000B                    |       | 1,000B              |       |
| 32.                                     | F04Q                | AIRPORT SYSTEM PLAN, STATEWIDE   |                  |                           |       |                     |       |
|   |                     | PLANS FOR THE DEVELOPMENT OF THE AIRPORT SYSTEM PLAN FOR THE AIRPORTS DIVISION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.  |                  |                           |       |                     |       |
|   |                     | PLANS  |                  | 1,000                     |       |                     |       |
|   |                     | TOTAL FUNDING  | TRN              | 250B                      |       |                     | B     |
|   |                     |  | TRN              | 750N                      |       |                     | N     |
| 33.                                     | F05B                | COMMUTER AIR TERMINAL IMPROVEMENTS, STATEWIDE  |                  |                           |       |                     |       |
|   |                     | DESIGN AND CONSTRUCTION OF TERMINAL IMPROVEMENTS INCLUDING FACILITIES FOR SECURITY SCREENING, EXPANSION OF HOLDROOM FACILITIES, BAGGAGE CLAIM FACILITIES, AND OTHER RELATED IMPROVEMENTS.  |                  |                           |       |                     |       |
|   |                     | DESIGN   |                  | 600                       |       |                     |       |
|   |                     | CONSTRUCTION   |                  |                           |       | 3,600               |       |
|   |                     | TOTAL FUNDING  | TRN              | 600B                      |       | 3,600B              |       |
| 34.                                     | F05C                | STRUCTURAL IMPROVEMENTS TO AIRFIELD PAVING, STATEWIDE  |                  |                           |       |                     |       |
|   |                     | DESIGN AND CONSTRUCTION FOR STRUCTURAL IMPROVEMENTS TO RUNWAYS, TAXIWAYS, AND APRONS AT STATEWIDE AIRPORTS. IMPROVEMENTS INCLUDE PAVING, MILL AND REPLACE, RECONSTRUCTION, GROOVING, PAINTING, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS |                  |                           |       |                     |       |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |         |                     |         |
|----------|---------------------|--|------------------|---------------------------|---------|---------------------|---------|
|          |                     |  |                  | FISCAL YEAR 2005-06       | M O F   | FISCAL YEAR 2006-07 | M O F   |
|          |                     | DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.  |                  |                           |         |                     |         |
|          |                     | DESIGN   |                  |                           | 800     |                     | 900     |
|          |                     | CONSTRUCTION   |                  |                           | 10,250  |                     | 11,370  |
|          |                     | TOTAL FUNDING  | TRN              |                           | 3,200B  |                     | 4,500B  |
|          |                     |  | TRN              |                           | 7,850N  |                     | 7,770N  |
| 35.      | F05D                | LOADING BRIDGE MODERNIZATION, STATEWIDE  |                  |                           |         |                     |         |
|          |                     | DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF NEW PASSENGER LOADING BRIDGES, STATEWIDE, AND THE REMOVAL OF THE EXISTING LOADING BRIDGES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.   |                  |                           |         |                     |         |
|          |                     | DESIGN   |                  |                           | 740     |                     |         |
|          |                     | CONSTRUCTION   |                  |                           | 8,250   |                     |         |
|          |                     | TOTAL FUNDING  | TRN              |                           | 2,590B  |                     | B       |
|          |                     |  | TRN              |                           | 6,400N  |                     | N       |
| 36.      | F05E                | FAA DISCRETIONARY FUNDED PROJECTS, STATEWIDE   |                  |                           |         |                     |         |
|          |                     | PLANS, DESIGN, AND CONSTRUCTION OF FAA DISCRETIONARY FUNDED IMPROVEMENTS AT VARIOUS STATE AIRPORTS. IMPROVEMENTS MAY INCLUDE THOSE FOR SAFETY AND CERTIFICATION REQUIREMENTS, OPERATIONAL EFFICIENCY, AND PROJECTS REQUIRED FOR AIRPORT RELATED DEVELOPMENT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |                  |                           |         |                     |         |
|          |                     | PLANS  |                  |                           | 1,000   |                     | 1,000   |
|          |                     | DESIGN   |                  |                           | 2,000   |                     | 2,000   |
|          |                     | CONSTRUCTION   |                  |                           | 7,000   |                     | 7,000   |
|          |                     | TOTAL FUNDING  | TRN              |                           | 10,000N |                     | 10,000N |
| 37.      | F08F                | AIRPORTS DIVISION CAPITAL IMPROVEMENT PROGRAM STAFF COSTS, STATEWIDE   |                  |                           |         |                     |         |
|          |                     | PLANS, DESIGN, AND CONSTRUCTION FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S AIRPORTS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM PROJECT RELATED POSITIONS.     |                  |                           |         |                     |         |
|          |                     | PLANS  |                  |                           | 1       |                     | 1       |
|          |                     | DESIGN   |                  |                           | 1       |                     | 1       |
|          |                     | CONSTRUCTION   |                  |                           | 2,149   |                     | 2,149   |
|          |                     | TOTAL FUNDING  | TRN              |                           | 2,151B  |                     | 2,151B  |
| 38.      | F08G                | MISCELLANEOUS AIRPORT PROJECTS, STATEWIDE  |                  |                           |         |                     |         |
|          |                     | DESIGN AND CONSTRUCTION OF IMPROVEMENTS AT VARIOUS STATE AIRPORTS. IMPROVEMENTS FOR SAFETY AND CERTIFICATION REQUIREMENTS, OPERATIONAL EFFICIENCY, AND PROJECTS REQUIRED FOR AIRPORT RELATED DEVELOPMENT.  |                  |                           |         |                     |         |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.                        | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |       |
|---------------------------------|---------------------|--|------------------|---------------------------|-------|---------------------|-------|
|                                 |                     |  |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F |
|                                 |                     | DESIGN   |                  | 300                       |       | 300                 |       |
|                                 |                     | CONSTRUCTION   |                  | 2,700                     |       | 2,700               |       |
|                                 |                     | TOTAL FUNDING  | TRN              | 3,000B                    |       | 3,000B              |       |
| 39.                             | F08O                | CONSTRUCTION MANAGEMENT SUPPORT, STATEWIDE   |                  |                           |       |                     |       |
|                                 |                     | CONSTRUCTION FOR CONSTRUCTION MANAGEMENT SUPPORT AT AIRPORT FACILITIES, STATEWIDE  |                  |                           |       |                     |       |
|                                 |                     | CONSTRUCTION   |                  | 125                       |       | 125                 |       |
|                                 |                     | TOTAL FUNDING  | TRN              | 125B                      |       | 125B                |       |
| 40.                             | F08P                | STORMWATER PERMIT COMPLIANCE, STATEWIDE  |                  |                           |       |                     |       |
|                                 |                     | CONSTRUCTION FOR FACILITIES NEEDED FOR STORMWATER PERMIT COMPLIANCE AT AIRPORTS STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.   |                  |                           |       |                     |       |
|                                 |                     | CONSTRUCTION   |                  | 5,000                     |       |                     |       |
|                                 |                     | TOTAL FUNDING  | TRN              | 1,250B                    |       |                     | B     |
|                                 |                     |  | TRN              | 3,750N                    |       |                     | N     |
| 41.                             | F08V                | AIRCRAFT RESCUE AND FIRE FIGHTING (ARFF) STATION IMPROVEMENTS, STATEWIDE   |                  |                           |       |                     |       |
|                                 |                     | DESIGN FOR IMPROVEMENTS NECESSARY TO RENOVATE AND/OR CONSTRUCT AIRCRAFT RESCUE AND FIRE FIGHTING (ARFF) STATIONS AND TO ENCLOSE NEW AND/OR RESERVE ARFF VEHICLES AND OTHER RELATED IMPROVEMENTS AT STATEWIDE AIRPORTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |                  |                           |       |                     |       |
|                                 |                     | DESIGN   |                  | 3,000                     |       |                     |       |
|                                 |                     | TOTAL FUNDING  | TRN              | 2,000B                    |       |                     | B     |
|                                 |                     |  | TRN              | 1,000N                    |       |                     | N     |
| <b>TRN301 - HONOLULU HARBOR</b> |                     |  |                  |                           |       |                     |       |
| 42.                             | J04                 | IMPROVEMENTS TO FACILITIES AT PIERS 19-29, HONOLULU HARBOR, OAHU   |                  |                           |       |                     |       |
|                                 |                     | DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO PIERS AND YARD AREAS INCLUDING PAVED AREAS, UTILITIES, AND OTHER RELATED IMPROVEMENTS.   |                  |                           |       |                     |       |
|                                 |                     | DESIGN   |                  | 600                       |       |                     |       |
|                                 |                     | CONSTRUCTION   |                  |                           |       | 6,000               |       |
|                                 |                     | TOTAL FUNDING  | TRN              | 600B                      |       |                     | B     |
|                                 |                     |  | TRN              | E                         |       | 6,000E              |       |
| 43.                             | J08                 | IMPROVEMENTS TO FACILITIES AT PIERS 1 AND 2, HONOLULU HARBOR, OAHU   |                  |                           |       |                     |       |
|                                 |                     | CONSTRUCTION FOR YARD IMPROVEMENTS INCLUDING THE UPGRADING OF THE LIGHTING SYSTEM, LAYOUT, AND OTHER RELATED IMPROVEMENTS.   |                  |                           |       |                     |       |
|                                 |                     | CONSTRUCTION   |                  | 2,000                     |       |                     |       |
|                                 |                     | TOTAL FUNDING  | TRN              | 2,000B                    |       |                     | B     |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.                                      | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |       |
|---|---------------------|--|------------------|---------------------------|-------|---------------------|-------|
|   |                     |  |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F |
| 44.   | J33                 | KAPALAMA CONTAINER TERMINAL, HONOLULU HARBOR, OAHU   |                  |                           |       |                     |       |
|   |                     | PLANS FOR THE DEVELOPMENT OF A NEW CONTAINER FACILITY AND OTHER RELATED IMPROVEMENTS.  |                  |                           |       |                     |       |
|   |                     | PLANS  |                  | 1,000                     |       |                     |       |
|   |                     | TOTAL FUNDING  | TRN              | 1,000B                    |       |                     | B     |
| 45.   | J34                 | PIERS 36 TO 38 IMPROVEMENTS, HONOLULU HARBOR, OAHU   |                  |                           |       |                     |       |
|   |                     | DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AT THE DOMESTIC COMMERCIAL FISHING VILLAGE INCLUDING ENVIRONMENTAL STUDIES AND MITIGATION, UTILITY SERVICES, ROADWAYS, PARKING, AND OTHER RELATED IMPROVEMENTS. |                  |                           |       |                     |       |
|   |                     | DESIGN   |                  | 300                       |       |                     |       |
|   |                     | CONSTRUCTION   |                  | 2,000                     |       |                     |       |
|   |                     | TOTAL FUNDING  | TRN              | 2,300B                    |       |                     | B     |
| <b>TRN303 - KALAELOA BARBERS POINT HARBOR</b> |                     |  |                  |                           |       |                     |       |
| 46.   | J11                 | KALAELOA BARBERS POINT HARBOR IMPROVEMENTS, OAHU   |                  |                           |       |                     |       |
|   |                     | DESIGN AND CONSTRUCTION FOR IMPROVEMENTS INCLUDING UTILITIES, ROADWAYS, LIGHTING, AND OTHER RELATED IMPROVEMENTS.  |                  |                           |       |                     |       |
|   |                     | DESIGN   |                  | 225                       |       |                     |       |
|   |                     | CONSTRUCTION   |                  |                           |       | 1,800               |       |
|   |                     | TOTAL FUNDING  | TRN              | 225B                      |       | 1,800B              |       |
| <b>TRN311 - HILO HARBOR</b>                   |                     |  |                  |                           |       |                     |       |
| 47.   | L01                 | NAVIGATIONAL IMPROVEMENTS, HILO HARBOR, HAWAII   |                  |                           |       |                     |       |
|   |                     | PLANS FOR DEEPENING, WIDENING, AND OTHER IMPROVEMENTS TO THE NAVIGATIONAL AREAS AT HILO HARBOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.              |                  |                           |       |                     |       |
|   |                     | PLANS  |                  | 700                       |       |                     |       |
|   |                     | TOTAL FUNDING  | TRN              | 700B                      |       |                     | B     |
| 48.   | L02                 | BARGE TERMINAL IMPROVEMENTS, HILO HARBOR, HAWAII   |                  |                           |       |                     |       |
|   |                     | CONSTRUCTION FOR IMPROVEMENTS TO THE BARGE TERMINAL INCLUDING PIERS, YARD, ROADWAYS, UTILITIES, STRUCTURES, AND OTHER RELATED IMPROVEMENTS.  |                  |                           |       |                     |       |
|   |                     | CONSTRUCTION   |                  |                           |       | 45,000              |       |
|   |                     | TOTAL FUNDING  | TRN              |                           | E     | 45,000E             |       |
| 49.   | L10                 | HILO HARBOR IMPROVEMENTS, HAWAII   |                  |                           |       |                     |       |
|   |                     | DESIGN FOR PIER IMPROVEMENTS AT HILO HARBOR AND OTHER RELATED IMPROVEMENTS.  |                  |                           |       |                     |       |
|   |                     | DESIGN   |                  | 1,200                     |       |                     |       |
|   |                     | TOTAL FUNDING  | TRN              | 1,200B                    |       |                     | B     |

## CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.                          | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |        |                     |        |
|-----------------------------------|---------------------|---|------------------|---------------------------|--------|---------------------|--------|
|                                   |                     |   |                  | FISCAL YEAR 2005-06       | M O F  | FISCAL YEAR 2006-07 | M O F  |
| <b>TRN313 - KAWAIHAE HARBOR</b>   |                     |   |                  |                           |        |                     |        |
| 50.                               | L09                 | NAVIGATIONAL IMPROVEMENTS, KAWAIHAE HARBOR, HAWAII  |                  |                           |        |                     |        |
|                                   |                     | PLANS FOR DEEPENING, WIDENING, AND OTHER IMPROVEMENTS TO THE NAVIGATIONAL AREAS AT KAWAIHAE HARBOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.   |                  |                           |        |                     |        |
|                                   |                     | PLANS   |                  |                           | 200    |                     |        |
|                                   |                     | TOTAL FUNDING   | TRN              |                           | 200B   |                     | B      |
| <b>TRN331 - KAHULUI HARBOR</b>    |                     |   |                  |                           |        |                     |        |
| 51.                               | M01                 | KAHULUI HARBOR IMPROVEMENTS, MAUI   |                  |                           |        |                     |        |
|                                   |                     | CONSTRUCTION FOR IMPROVEMENTS TO PIER 1 AND OTHER RELATED IMPROVEMENTS.   |                  |                           |        |                     |        |
|                                   |                     | CONSTRUCTION  |                  |                           | 1,000  |                     |        |
|                                   |                     | TOTAL FUNDING   | TRN              |                           | 1,000B |                     | B      |
| 52.                               | M09                 | BARGE TERMINAL IMPROVEMENTS, KAHULUI HARBOR, HAWAII   |                  |                           |        |                     |        |
|                                   |                     | DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE BARGE TERMINAL INCLUDING PIERS, YARDS, SHEDS, AND OTHER RELATED IMPROVEMENTS.   |                  |                           |        |                     |        |
|                                   |                     | DESIGN  |                  |                           | 200    |                     |        |
|                                   |                     | CONSTRUCTION  |                  |                           |        |                     | 1,500  |
|                                   |                     | TOTAL FUNDING   | TRN              |                           | 200B   |                     | 1,500B |
| <b>TRN361 - NAWILIWILI HARBOR</b> |                     |   |                  |                           |        |                     |        |
| 53.                               | K07                 | NAWILIWILI HARBOR CHANNEL MODIFICATIONS, KAUAI  |                  |                           |        |                     |        |
|                                   |                     | PLANS FOR DEEPENING, WIDENING, AND OTHER IMPROVEMENTS TO THE ENTRANCE CHANNEL AT NAWILIWILI HARBOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.   |                  |                           |        |                     |        |
|                                   |                     | PLANS   |                  |                           | 375    |                     |        |
|                                   |                     | TOTAL FUNDING   | TRN              |                           | 375B   |                     | B      |
| <b>TRN363 - PORT ALLEN HARBOR</b> |                     |   |                  |                           |        |                     |        |
| 54.                               | K05                 | NAVIGATIONAL IMPROVEMENTS, PORT ALLEN HARBOR, KAUAI   |                  |                           |        |                     |        |
|                                   |                     | PLANS FOR DEEPENING, WIDENING, AND OTHER IMPROVEMENTS TO THE NAVIGATIONAL AREAS AT PORT ALLEN HARBOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |                  |                           |        |                     |        |
|                                   |                     | PLANS   |                  |                           | 500    |                     |        |
|                                   |                     | TOTAL FUNDING   | TRN              |                           | 500B   |                     | B      |
| <b>TRN351 - KAUMALAPAU HARBOR</b> |                     |   |                  |                           |        |                     |        |
| 55.                               | M12                 | KAUMALAPAU HARBOR IMPROVEMENTS, LANAI   |                  |                           |        |                     |        |
|                                   |                     | DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE PIER, YARD, LIGHTING, UTILITIES, STRUCTURES, AND OTHER RELATED IMPROVEMENTS.  |                  |                           |        |                     |        |
|                                   |                     | DESIGN  |                  |                           | 500    |                     |        |
|                                   |                     | CONSTRUCTION  |                  |                           |        |                     | 4,000  |
|                                   |                     | TOTAL FUNDING   | TRN              |                           | 500B   |                     | 4,000B |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.                               | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |       |
|--|---------------------|---|------------------|---------------------------|-------|---------------------|-------|
|  |                     |   |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F |
| <b>TRN395 - HARBORS ADMINISTRATION</b> |                     |   |                  |                           |       |                     |       |
| 56.                                    | I00                 | HARBORS DIVISION CAPITAL IMPROVEMENT PROGRAM STAFF COSTS, STATEWIDE   |                  |                           |       |                     |       |
|  |                     | PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S HARBORS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS. |                  |                           |       |                     |       |
|  |                     | PLANS   |                  |                           | 988   |                     | 988   |
|  |                     | TOTAL FUNDING   | TRN              |                           | 988B  |                     | 988B  |
| 57.                                    | I01                 | HARBOR PLANNING, STATEWIDE  |                  |                           |       |                     |       |
|  |                     | PLANS FOR CONTINUING HARBOR STUDIES, RESEARCH, AND ADVANCE PLANNING OF HARBOR AND TERMINAL FACILITIES ON ALL ISLANDS.   |                  |                           |       |                     |       |
|  |                     | PLANS   |                  |                           | 350   |                     | 350   |
|  |                     | TOTAL FUNDING   | TRN              |                           | 350B  |                     | 350B  |
| 58.                                    | I03                 | MISCELLANEOUS IMPROVEMENTS TO FACILITIES AT NEIGHBOR ISLAND PORTS, STATEWIDE  |                  |                           |       |                     |       |
|  |                     | DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO YARD AREAS, SHEDS, PIERS, UTILITIES, WATER AREAS, AND OTHER FACILITIES.   |                  |                           |       |                     |       |
|  |                     | DESIGN  |                  |                           | 75    |                     | 40    |
|  |                     | CONSTRUCTION  |                  |                           | 300   |                     | 160   |
|  |                     | TOTAL FUNDING   | TRN              |                           | 375B  |                     | 200B  |
| 59.                                    | I05                 | MISCELLANEOUS IMPROVEMENTS TO FACILITIES AT OAHU PORTS, OAHU  |                  |                           |       |                     |       |
|  |                     | DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO YARD AREAS, SHEDS, PIERS, UTILITIES, WATER AREAS, AND OTHER FACILITIES.   |                  |                           |       |                     |       |
|  |                     | DESIGN  |                  |                           | 50    |                     | 30    |
|  |                     | CONSTRUCTION  |                  |                           | 250   |                     | 170   |
|  |                     | TOTAL FUNDING   | TRN              |                           | 300B  |                     | 200B  |
| 60.                                    | I06                 | ARCHITECTURAL AND ENGINEERING SUPPORT, STATEWIDE  |                  |                           |       |                     |       |
|  |                     | DESIGN FOR CONSULTANT SERVICES DURING THE DESIGN OF CAPITAL PROJECTS AT HARBOR FACILITIES STATEWIDE   |                  |                           |       |                     |       |
|  |                     | DESIGN  |                  |                           | 750   |                     |       |
|  |                     | TOTAL FUNDING   | TRN              |                           | 750B  |                     | B     |
| 61.                                    | I07                 | ENVIRONMENTAL REMEDIATION OF COMMERCIAL HARBOR FACILITIES, STATEWIDE  |                  |                           |       |                     |       |
|  |                     | PLANS, DESIGN, AND CONSTRUCTION FOR STUDIES AND ENVIRONMENTAL REMEDIATION MEASURES AT COMMERCIAL HARBOR FACILITIES.   |                  |                           |       |                     |       |
|  |                     | PLANS   |                  |                           | 250   |                     |       |
|  |                     | DESIGN  |                  |                           | 250   |                     |       |

## CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.                      | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |         |                     |         |
|-------------------------------|---------------------|--|------------------|---------------------------|---------|---------------------|---------|
|                               |                     |  |                  | FISCAL YEAR 2005-06       | M O F   | FISCAL YEAR 2006-07 | M O F   |
|                               |                     | CONSTRUCTION   |                  |                           | 500     |                     |         |
|                               |                     | TOTAL FUNDING  | TRN              |                           | 1,000B  |                     | B       |
| 62.                           | 108                 | REPLACEMENT OF TIMBER FENDERS, STATEWIDE   |                  |                           |         |                     |         |
|                               |                     | DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF TIMBER FENDER SYSTEMS WITH CONCRETE SYSTEMS AT COMMERCIAL HARBORS STATEWIDE.  |                  |                           |         |                     |         |
|                               |                     | DESIGN   |                  |                           | 100     |                     |         |
|                               |                     | CONSTRUCTION   |                  |                           |         |                     | 1,300   |
|                               |                     | TOTAL FUNDING  | TRN              |                           | 100B    |                     | 1,300B  |
| 63.                           | 113                 | CONSTRUCTION MANAGEMENT SUPPORT, STATEWIDE   |                  |                           |         |                     |         |
|                               |                     | CONSTRUCTION FOR CONSULTANT SERVICES DURING CONSTRUCTION PROJECTS AT HARBOR FACILITIES STATEWIDE.  |                  |                           |         |                     |         |
|                               |                     | CONSTRUCTION   |                  |                           | 1,000   |                     |         |
|                               |                     | TOTAL FUNDING  | TRN              |                           | 1,000B  |                     | B       |
| 64.                           | 114                 | FERRY TERMINAL IMPROVEMENTS, STATEWIDE   |                  |                           |         |                     |         |
|                               |                     | DESIGN AND CONSTRUCTION FOR FERRY TERMINAL IMPROVEMENTS INCLUDING BERTHING FACILITIES, PARKING, LIGHTING, ROADWAYS, UTILITIES, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |                  |                           |         |                     |         |
|                               |                     | DESIGN   |                  |                           | 2,000   |                     | 2,000   |
|                               |                     | CONSTRUCTION   |                  |                           | 18,000  |                     | 18,000  |
|                               |                     | TOTAL FUNDING  | TRN              |                           | 20,000D |                     | 20,000D |
| 65.                           | 115                 | SECURITY IMPROVEMENTS AT COMMERCIAL HARBORS, STATEWIDE   |                  |                           |         |                     |         |
|                               |                     | DESIGN AND CONSTRUCTION OF SECURITY SYSTEM IMPROVEMENTS AT COMMERCIAL HARBOR FACILITIES, STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.  |                  |                           |         |                     |         |
|                               |                     | DESIGN   |                  |                           | 250     |                     |         |
|                               |                     | CONSTRUCTION   |                  |                           | 3,750   |                     |         |
|                               |                     | TOTAL FUNDING  | TRN              |                           | 2,000B  |                     | B       |
|                               |                     |  | TRN              |                           | 2,000N  |                     | N       |
| 66.                           |                     | NEW HARBOR FACILITY, MAUI  |                  |                           |         |                     |         |
|                               |                     | PLANS FOR A STUDY FOR A NEW HARBOR FACILITY ON MAUI.   |                  |                           |         |                     |         |
|                               |                     | PLANS  |                  |                           | 1,000   |                     |         |
|                               |                     | TOTAL FUNDING  | TRN              |                           | 1,000B  |                     | B       |
| <b>TRN501 - OAHU HIGHWAYS</b> |                     |  |                  |                           |         |                     |         |
| 67.                           | S074                | OAHU BIKEWAYS, OAHU  |                  |                           |         |                     |         |
|                               |                     | LAND ACQUISITION AND CONSTRUCTION FOR A MULTI-USE PATH FROM THE VICINITY OF WAIPIO POINT ACCESS ROAD TO LUALUALEI NAVAL  |                  |                           |         |                     |         |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |        |                     |        |
|----------|---------------------|---|------------------|---------------------------|--------|---------------------|--------|
|          |                     |   |                  | FISCAL YEAR 2005-06       | M O F  | FISCAL YEAR 2006-07 | M O F  |
|          |                     | ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.   |                  |                           |        |                     |        |
|          |                     | LAND  |                  |                           |        |                     | 1,000  |
|          |                     | CONSTRUCTION  |                  |                           |        |                     | 2,500  |
|          |                     | TOTAL FUNDING   | TRN              |                           | E      |                     | 700E   |
|          |                     |   | TRN              |                           | N      |                     | 2,800N |
| 68.      | S221                | KALANIANAOLE HIGHWAY, INOAOLE STREAM BRIDGE REPLACEMENT, OAHU   |                  |                           |        |                     |        |
|          |                     | CONSTRUCTION FOR THE REPLACEMENT OF THE INOAOLE STREAM BRIDGE WITH A LARGER BRIDGE, INCLUDING IMPROVEMENTS TO THE ROADWAY APPROACHES, DETOUR ROAD, AND UTILITY RELOCATIONS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.   |                  |                           |        |                     |        |
|          |                     | CONSTRUCTION  |                  |                           |        |                     | 1,550  |
|          |                     | TOTAL FUNDING   | TRN              |                           | 310E   |                     | E      |
|          |                     |   | TRN              |                           | 1,240N |                     | N      |
| 69.      | S231                | KALANIANAOLE HIGHWAY IMPROVEMENTS, OLOMANA GOLF COURSE TO WAIMANALO BEACH PARK, OAHU  |                  |                           |        |                     |        |
|          |                     | LAND ACQUISITION FOR THE CONSTRUCTION OF TURNING LANES, SIDEWALKS, CURB RAMPS, BIKE PATHS OR BIKE ROUTES, UPGRADING TRAFFIC SIGNALS, UTILITY RELOCATION, DRAINAGE IMPROVEMENTS, AND OTHER MISCELLANEOUS IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |                  |                           |        |                     |        |
|          |                     | LAND  |                  |                           |        |                     | 50     |
|          |                     | TOTAL FUNDING   | TRN              |                           | 10E    |                     | E      |
|          |                     |   | TRN              |                           | 40N    |                     | N      |
| 70.      | S266                | GUARDRAIL AND SHOULDER IMPROVEMENTS, VARIOUS LOCATIONS, OAHU  |                  |                           |        |                     |        |
|          |                     | DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING THE EXISTING GUARDRAILS, END TERMINALS, TRANSITIONS, BRIDGE RAILING, BRIDGE ENDPPOSTS AND CRASH ATTENUATORS, RECONSTRUCTING AND PAVING OF SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.          |                  |                           |        |                     |        |
|          |                     | DESIGN  |                  |                           |        |                     | 250    |
|          |                     | CONSTRUCTION  |                  |                           |        |                     | 3,000  |
|          |                     | TOTAL FUNDING   | TRN              |                           | 650E   |                     | 650E   |
|          |                     |   | TRN              |                           | 2,600N |                     | 2,600N |
| 71.      | S270                | TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAYS, OAHU   |                  |                           |        |                     |        |
|          |                     | DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION  |                  |                           |        |                     |        |



CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |        |
|----------|---------------------|---|------------------|---------------------------|-------|---------------------|--------|
|          |                     |   |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F  |
|          |                     | INCLUDING ELIMINATING CONSTRUCTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS FOR MORE EFFICIENT TRAFFIC FLOW.                                     |                  |                           |       |                     |        |
|          |                     | DESIGN  |                  | 200                       |       |                     | 200    |
|          |                     | CONSTRUCTION  |                  | 1,000                     |       |                     | 1,000  |
|          |                     | TOTAL FUNDING   | TRN              | 1,200E                    |       |                     | 1,200E |
| 72.      | S273                | KAMEHAMEHA HIGHWAY, INTERSECTION IMPROVEMENTS AT KUILIMA DRIVE, OAHU  |                  |                           |       |                     |        |
|          |                     | CONSTRUCTION FOR A LEFT TURN LANE ON KAMEHAMEHA HIGHWAY INTO KUILIMA DRIVE, REPLACING O'IO STREAM BRIDGE AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.              |                  |                           |       |                     |        |
|          |                     | CONSTRUCTION  |                  |                           |       |                     | 6,000  |
|          |                     | TOTAL FUNDING   | TRN              |                           | E     |                     | 1,200E |
|          |                     |   | TRN              |                           | N     |                     | 4,800N |
| 73.      | S280                | INTERSTATE ROUTE H-1, PEARL CITY VIADUCT AND WAIMALU VIADUCT IMPROVEMENTS, OAHU   |                  |                           |       |                     |        |
|          |                     | CONSTRUCTION FOR THE REPLACING, REPAIRING, AND/OR STRENGTHENING OF THE PEARL CITY AND WAIMALU VIADUCTS CONCRETE DECK AND OTHER STRUCTURAL COMPONENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |                  |                           |       |                     |        |
|          |                     | CONSTRUCTION  |                  |                           |       |                     | 5,000  |
|          |                     | TOTAL FUNDING   | TRN              |                           | E     |                     | 1,000E |
|          |                     |   | TRN              |                           | N     |                     | 4,000N |
| 74.      | S296                | KAMEHAMEHA HIGHWAY, KAIPAPAU STREAM BRIDGE REPLACEMENT, OAHU  |                  |                           |       |                     |        |
|          |                     | DESIGN AND CONSTRUCTION FOR REPLACEMENT OR REHABILITATION OF KAIPAPAU STREAM BRIDGE TO INCLUDE SIDEWALKS, BRIDGE RAILINGS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.    |                  |                           |       |                     |        |
|          |                     | DESIGN  |                  | 200                       |       |                     |        |
|          |                     | CONSTRUCTION  |                  |                           |       |                     | 8,800  |
|          |                     | TOTAL FUNDING   | TRN              | 200E                      |       |                     | 1,760E |
|          |                     |   | TRN              |                           | N     |                     | 7,040N |
| 75.      | S301                | FARRINGTON HIGHWAY, MAKAHA BRIDGES NO. 3 AND NO. 3A REPLACEMENT, OAHU   |                  |                           |       |                     |        |
|          |                     | CONSTRUCTION FOR THE REPLACEMENT OF BRIDGES NO. 3 AND 3A IN THE VICINITY OF MAKAHA BEACH PARK TO INCLUDE SIDEWALKS, BRIDGE RAILINGS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY  |                  |                           |       |                     |        |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |       |
|----------|---------------------|---|------------------|---------------------------|-------|---------------------|-------|
|          |                     |   |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F |
|          |                     | FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.   |                  |                           |       |                     |       |
|          |                     | CONSTRUCTION  |                  |                           |       | 12,500              |       |
|          |                     | TOTAL FUNDING   | TRN              |                           | E     | 2,500E              |       |
|          |                     |   | TRN              |                           | N     | 10,000N             |       |
| 76.      | S304                | KAMEHAMEHA HIGHWAY, CANE HAUL ROAD INBOUND BRIDGE REPLACEMENT, OAHU   |                  |                           |       |                     |       |
|          |                     | CONSTRUCTION FOR REPLACEMENT OF THE INBOUND CANE HAUL ROAD STRUCTURE TO INCLUDE BRIDGE RAILINGS AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.   |                  |                           |       |                     |       |
|          |                     | CONSTRUCTION  |                  |                           |       | 3,500               |       |
|          |                     | TOTAL FUNDING   | TRN              |                           | E     | 700E                |       |
|          |                     |   | TRN              |                           | N     | 2,800N              |       |
| 77.      | S305                | KAMEHAMEHA HIGHWAY, CANE HAUL ROAD OUTBOUND BRIDGE REPLACEMENT, OAHU  |                  |                           |       |                     |       |
|          |                     | CONSTRUCTION FOR REPLACEMENT OF THE OUTBOUND CANE HAUL ROAD STRUCTURE TO INCLUDE BRIDGE RAILINGS AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.  |                  |                           |       |                     |       |
|          |                     | CONSTRUCTION  |                  |                           |       | 3,500               |       |
|          |                     | TOTAL FUNDING   | TRN              |                           | E     | 700E                |       |
|          |                     |   | TRN              |                           | N     | 2,800N              |       |
| 78.      | S306                | KAMEHAMEHA HIGHWAY, SOUTH KAHANA STREAM BRIDGE REPLACEMENT, OAHU  |                  |                           |       |                     |       |
|          |                     | CONSTRUCTION FOR REPLACEMENT OF SOUTH KAHANA STREAM BRIDGE TO INCLUDE SIDEWALKS, BRIDGE RAILINGS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |                  |                           |       |                     |       |
|          |                     | CONSTRUCTION  |                  |                           |       | 9,500               |       |
|          |                     | TOTAL FUNDING   | TRN              |                           | E     | 1,900E              |       |
|          |                     |   | TRN              |                           | N     | 7,600N              |       |
| 79.      | S307                | KAMEHAMEHA HIGHWAY, KALUANUI STREAM BRIDGE REPLACEMENT, OAHU  |                  |                           |       |                     |       |
|          |                     | CONSTRUCTION FOR REPLACEMENT OF KALUANUI STREAM BRIDGE TO INCLUDE SIDEWALKS, BRIDGE RAILINGS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.     |                  |                           |       |                     |       |
|          |                     | CONSTRUCTION  |                  |                           |       | 8,500               |       |
|          |                     | TOTAL FUNDING   | TRN              |                           | E     | 1,700E              |       |
|          |                     |   | TRN              |                           | N     | 6,800N              |       |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |        |                     |        |
|----------|---------------------|---|------------------|---------------------------|--------|---------------------|--------|
|          |                     |   |                  | FISCAL YEAR 2005-06       | M O F  | FISCAL YEAR 2006-07 | M O F  |
| 80.      | S314                | KAMEHAMEHA HIGHWAY, UPPER POAMOHO STREAM BRIDGE REPLACEMENT, OAHU   |                  |                           |        |                     |        |
|          |                     | LAND ACQUISITION FOR REPLACEMENT OF A MULTI-GIRDER REINFORCED CONCRETE BRIDGE ON KAMEHAMEHA HIGHWAY IN THE VICINITY OF WAHIAWA TO INCLUDE BRIDGE RAILINGS, PEDESTRIAN WALKWAYS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |                  |                           |        |                     |        |
|          |                     | LAND  |                  |                           | 970    |                     |        |
|          |                     | TOTAL FUNDING   | TRN              |                           | 195E   |                     | E      |
|          |                     |   | TRN              |                           | 775N   |                     | N      |
| 81.      | S315                | KAMEHAMEHA HIGHWAY, REHABILITATION OF LAIELOA STREAM BRIDGE, OAHU   |                  |                           |        |                     |        |
|          |                     | LAND ACQUISITION FOR REHABILITATION OF A CONCRETE SLAB BRIDGE ON KAMEHAMEHA HIGHWAY IN THE VICINITY OF LAIE TO INCLUDE BRIDGE RAILINGS, WALKWAYS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.                               |                  |                           |        |                     |        |
|          |                     | LAND  |                  |                           |        |                     | 250    |
|          |                     | TOTAL FUNDING   | TRN              |                           |        | E                   | 50E    |
|          |                     |   | TRN              |                           |        | N                   | 200N   |
| 82.      | S317                | KAMEHAMEHA HIGHWAY, REHABILITATION OF WAIPILOPILO STREAM BRIDGE, OAHU   |                  |                           |        |                     |        |
|          |                     | LAND ACQUISITION FOR REHABILITATION OF A CONCRETE TEE-BRIDGE ON KAMEHAMEHA HIGHWAY IN THE VICINITY OF HAUULA TO INCLUDE BRIDGE RAILINGS, WALKWAYS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.                              |                  |                           |        |                     |        |
|          |                     | LAND  |                  |                           | 380    |                     |        |
|          |                     | TOTAL FUNDING   | TRN              |                           | 75E    |                     | E      |
|          |                     |   | TRN              |                           | 305N   |                     | N      |
| 83.      | S318                | HIGHWAY LIGHTING REPLACEMENT AT VARIOUS LOCATIONS, OAHU   |                  |                           |        |                     |        |
|          |                     | CONSTRUCTION FOR REPLACING AND/OR UPGRADING THE EXISTING HIGHWAY LIGHTING SYSTEM ON STATE HIGHWAYS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.   |                  |                           |        |                     |        |
|          |                     | CONSTRUCTION  |                  |                           | 4,400  |                     | 6,000  |
|          |                     | TOTAL FUNDING   | TRN              |                           | 880E   |                     | 1,200E |
|          |                     |   | TRN              |                           | 3,520N |                     | 4,800N |
| 84.      | S319                | PEARL CITY, WAIANAE, AND KANEOHE BASEYARDS WASHDOWN RACKS, OAHU   |                  |                           |        |                     |        |
|          |                     | CONSTRUCTION FOR INSTALLING WASHDOWN RACKS TO INCLUDE A WATER RECYCLING UNIT, STEAM PRESSURE WASHERS, AND A CONCRETE PAD  |                  |                           |        |                     |        |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |        |
|----------|---------------------|--|------------------|---------------------------|-------|---------------------|--------|
|          |                     |  |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F  |
|          |                     | FOR COMPLIANCE WITH THE DEPARTMENT OF HEALTH REGULATIONS AND THE CLEAN WATER ACT.  |                  |                           |       |                     |        |
|          |                     | CONSTRUCTION   |                  |                           |       |                     | 1,400  |
|          |                     | TOTAL FUNDING  | TRN              |                           | E     |                     | 1,400E |
| 85.      | S326                | KALANIANAOLE HIGHWAY MEDIAN IMPROVEMENTS, VICINITY OF OLOMANA GOLF COURSE, OAHU  |                  |                           |       |                     |        |
|          |                     | CONSTRUCTION FOR MEDIAN IMPROVEMENTS, WIDENING OF THE ROADWAY, INSTALLING SIGNS, MARKINGS, AND OTHER INCIDENTAL IMPROVEMENTS IN THE VICINITY OF OLOMANA GOLF COURSE.   |                  |                           |       |                     |        |
|          |                     | CONSTRUCTION   |                  |                           |       |                     | 1,750  |
|          |                     | TOTAL FUNDING  | TRN              |                           | E     |                     | 1,750E |
| 86.      | S327                | DRYING BED FACILITIES, OAHU  |                  |                           |       |                     |        |
|          |                     | PLANS AND DESIGN FOR THE CONSTRUCTION OF DRYING BED FACILITIES FOR THE PROCESSING AND DISPOSAL OF HIGHWAY DEBRIS COLLECTED BY MAINTENANCE OPERATIONS.  |                  |                           |       |                     |        |
|          |                     | PLANS  |                  |                           |       | 120                 |        |
|          |                     | DESIGN   |                  |                           |       |                     | 300    |
|          |                     | TOTAL FUNDING  | TRN              |                           | 120E  |                     | 300E   |
| 87.      | S328                | KAMEHAMEHA HIGHWAY, REHABILITATION OF MAKAAU STREAM BRIDGE, OAHU   |                  |                           |       |                     |        |
|          |                     | DESIGN FOR THE REHABILITATION OF MAKAAU STREAM BRIDGE TO INCLUDE BRIDGE RAILINGS, SHOULDERS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.                       |                  |                           |       |                     |        |
|          |                     | DESIGN   |                  |                           |       | 600                 |        |
|          |                     | TOTAL FUNDING  | TRN              |                           |       | 120E                | E      |
|          |                     |  | TRN              |                           |       | 480N                | N      |
| 88.      | S329                | KAMEHAMEHA HIGHWAY, REHABILITATION OF WAIKANE STREAM BRIDGE, OAHU  |                  |                           |       |                     |        |
|          |                     | LAND ACQUISITION AND DESIGN FOR THE REHABILITATION OF WAIKANE STREAM BRIDGE TO INCLUDE BRIDGE RAILINGS, SHOULDERS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |                  |                           |       |                     |        |
|          |                     | LAND   |                  |                           |       |                     | 240    |
|          |                     | DESIGN   |                  |                           |       | 600                 |        |
|          |                     | TOTAL FUNDING  | TRN              |                           | 120E  |                     | 50E    |
|          |                     |  | TRN              |                           | 480N  |                     | 190N   |
| 89.      | S330                | KAMEHAMEHA HIGHWAY, REHABILITATION OF KAWAIOA STREAM BRIDGE, OAHU  |                  |                           |       |                     |        |
|          |                     | DESIGN FOR THE REHABILITATION OF KAWAIOA STREAM BRIDGE TO INCLUDE BRIDGE RAILINGS, SHOULDERS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.                      |                  |                           |       |                     |        |

## CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |         |                     |        |
|----------|---------------------|---|------------------|---------------------------|---------|---------------------|--------|
|          |                     |   |                  | FISCAL YEAR 2005-06       | M O F   | FISCAL YEAR 2006-07 | M O F  |
|          |                     | DESIGN  |                  |                           | 600     |                     |        |
|          |                     | TOTAL FUNDING   | TRN              |                           | 120E    |                     | E      |
|          |                     |   | TRN              |                           | 480N    |                     | N      |
| 90.      | S331                | INTERSTATE ROUTE H-1 WIDENING, EASTBOUND, WAI'AU INTERCHANGE TO HALAWA INTERCHANGE, OAHU  |                  |                           |         |                     |        |
|          |                     | DESIGN FOR THE WIDENING OF H-1 EAST BOUND FREEWAY AND VIADUCT STRUCTURE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.  |                  |                           |         |                     |        |
|          |                     | DESIGN  |                  |                           |         |                     | 4,000  |
|          |                     | TOTAL FUNDING   | TRN              |                           |         | E                   | 800E   |
|          |                     |   | TRN              |                           |         | N                   | 3,200N |
| 91.      | S332                | EROSION CONTROL PROGRAM FOR STATE HIGHWAYS AND FACILITIES, OAHU   |                  |                           |         |                     |        |
|          |                     | CONSTRUCTION FOR PERMANENT EROSION CONTROL MITIGATION MEASURES ON STATE HIGHWAYS AND FACILITIES ON OAHU.  |                  |                           |         |                     |        |
|          |                     | CONSTRUCTION  |                  |                           | 1,000   |                     |        |
|          |                     | TOTAL FUNDING   | TRN              |                           | 1,000E  |                     | E      |
| 92.      | SP9101              | NORTH/SOUTH ROAD, KAPOLEI PARKWAY TO VICINITY OF INTERSTATE ROUTE H-1, OAHU   |                  |                           |         |                     |        |
|          |                     | CONSTRUCTION FOR NORTH/SOUTH ROAD FROM KAPOLEI PARKWAY TO VICINITY OF THE H-1 FREEWAY. IMPROVEMENTS INCLUDE A MULTI-LANE HIGHWAY AND AN INTERCHANGE AT THE H-1 FREEWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (SPECIAL FUNDS FROM HIGHWAY DEVELOPMENT SPECIAL FUND) |                  |                           |         |                     |        |
|          |                     | CONSTRUCTION  |                  |                           | 38,500  |                     |        |
|          |                     | TOTAL FUNDING   | TRN              |                           | 3,000B  |                     | B      |
|          |                     |   | TRN              |                           | 4,700E  |                     | E      |
|          |                     |   | TRN              |                           | 30,800N |                     | N      |
| 93.      |                     | SAND ISLAND TO EWA BEACH TUNNEL, OAHU   |                  |                           |         |                     |        |
|          |                     | PLANS FOR A FEASIBILITY STUDY FOR A TUNNEL UNDER PEARL HARBOR FROM SAND ISLAND TO EWA BEACH.  |                  |                           |         |                     |        |
|          |                     | PLANS   |                  |                           | 200     |                     |        |
|          |                     | TOTAL FUNDING   | TRN              |                           | 200E    |                     | E      |
| 94.      |                     | FARRINGTON HIGHWAY IMPROVEMENTS, OAHU   |                  |                           |         |                     |        |
|          |                     | DESIGN AND CONSTRUCTION OF LEFT TURN LANES ALONG FARRINGTON HIGHWAY IN THE HONOLULU BOUND DIRECTION AT HALEAKALA AND NANAKULI AVENUES.  |                  |                           |         |                     |        |
|          |                     | DESIGN  |                  |                           | 100     |                     |        |
|          |                     | CONSTRUCTION  |                  |                           | 1,900   |                     |        |
|          |                     | TOTAL FUNDING   | TRN              |                           | 2,000E  |                     | E      |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |        |                     |       |
|----------|---------------------|---|------------------|---------------------------|--------|---------------------|-------|
|          |                     |   |                  | FISCAL YEAR 2005-06       | M O F  | FISCAL YEAR 2006-07 | M O F |
| 95.      |                     | KAMEHAMEHA HIGHWAY IMPROVEMENTS, CENTER DRIVE TO WAIHONA STREET, OAHU   |                  |                           |        |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR TRANSPORTATION IMPROVEMENTS ON KAMEHAMEHA HIGHWAY FROM CENTER DRIVE TO WAIHONA STREET.                                    |                  |                           |        |                     |       |
|          |                     | DESIGN  |                  |                           | 200    |                     |       |
|          |                     | CONSTRUCTION  |                  |                           | 1,000  |                     |       |
|          |                     | TOTAL FUNDING   | TRN              |                           | 1,200E |                     | E     |
| 96.      |                     | CENTRAL OAHU TRAFFIC STUDY, OAHU  |                  |                           |        |                     |       |
|          |                     | PLANS FOR A TRAFFIC STUDY FOR CENTRAL OAHU TO INCLUDE A REVIEW OF ALL PAST STUDIES FOR THE AREA, AND TO STUDY A POSSIBLE CONTRAFLOW LANE TO MILILANI. |                  |                           |        |                     |       |
|          |                     | PLANS   |                  |                           | 1,000  |                     |       |
|          |                     | TOTAL FUNDING   | TRN              |                           | 1,000E |                     | E     |
| 97.      |                     | KAHEKILI HIGHWAY, CONTRAFLOW LANE, OAHU   |                  |                           |        |                     |       |
|          |                     | PLANS FOR HIGHWAY WIDENING AND OTHER IMPROVEMENTS TO ACCOMMODATE A CONTRAFLOW LANE FROM HAIKU ROAD TO HUI IWA STREET.                                 |                  |                           |        |                     |       |
|          |                     | PLANS   |                  |                           | 300    |                     |       |
|          |                     | TOTAL FUNDING   | TRN              |                           | 300E   |                     | E     |
| 98.      |                     | LEEWARD COMMUNITY COLLEGE, SECOND ACCESS, OAHU  |                  |                           |        |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR A SECOND ACCESS TO THE LEEWARD COMMUNITY COLLEGE.   |                  |                           |        |                     |       |
|          |                     | DESIGN  |                  |                           | 1      |                     |       |
|          |                     | CONSTRUCTION  |                  |                           | 4,999  |                     |       |
|          |                     | TOTAL FUNDING   | TRN              |                           | 5,000E |                     | E     |

TRN511 - HAWAII HIGHWAYS

|      |      |  |     |  |        |  |        |
|------|------|--|-----|--|--------|--|--------|
| 99.  | T077 | GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, HAWAII  |     |  |        |  |        |
|      |      | DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING EXISTING GUARDRAILS, END TERMINALS, TRANSITIONS, BRIDGE RAILING, BRIDGE END POSTS AND CRASH ATTENUATOR, AND RECONSTRUCTING AND PAVING SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |     |  |        |  |        |
|      |      | DESIGN   |     |  | 100    |  | 100    |
|      |      | CONSTRUCTION   |     |  | 1,400  |  | 1,400  |
|      |      | TOTAL FUNDING  | TRN |  | 300E   |  | 300E   |
|      |      |  | TRN |  | 1,200N |  | 1,200N |
| 100. | T080 | KAWAIHAE ROAD, WAIAKA STREAM BRIDGE REPLACEMENT AND REALIGNMENT, HAWAII  |     |  |        |  |        |
|      |      | LAND ACQUISITION FOR REPLACING THE EXISTING WAIAKA STREAM BRIDGE, REALIGNING THE BRIDGE APPROACHES, RECONSTRUCTING THE ROUTE 19/   |     |  |        |  |        |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |         |
|----------|---------------------|--|------------------|---------------------------|-------|---------------------|---------|
|          |                     |  |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F   |
|          |                     | ROUTE 250 INTERSECTION, AND INSTALLING SAFETY IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.  |                  |                           |       |                     |         |
|          |                     | LAND   |                  |                           |       |                     | 3,890   |
|          |                     | TOTAL FUNDING  | TRN              |                           | E     |                     | 780E    |
|          |                     |  | TRN              |                           | N     |                     | 3,110N  |
| 101.     | T082                | QUEEN KAAHUMANU HIGHWAY WIDENING, HAWAII   |                  |                           |       |                     |         |
|          |                     | CONSTRUCTION FOR THE WIDENING OF QUEEN KAAHUMANU HIGHWAY TO A FOUR-LANE DIVIDED HIGHWAY FROM VICINITY OF KEALAKEHE PARKWAY TO THE VICINITY OF KEAHOLE AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |                  |                           |       |                     |         |
|          |                     | CONSTRUCTION   |                  |                           |       |                     | 30,000  |
|          |                     | TOTAL FUNDING  | TRN              |                           | E     |                     | 1,000E  |
|          |                     |  | TRN              |                           | N     |                     | 29,000N |
| 102.     | T085                | KEALAKEHE PARKWAY EXTENSION, VICINITY OF KEANALEHU DRIVE TO KEALAKAA STREET, HAWAII  |                  |                           |       |                     |         |
|          |                     | DESIGN FOR THE EXTENSION OF KEALAKEHE PARKWAY FROM KEANALEHU DRIVE TO KEALAKAA STREET. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.   |                  |                           |       |                     |         |
|          |                     | DESIGN   |                  | 500                       |       |                     |         |
|          |                     | TOTAL FUNDING  | TRN              | 100E                      |       |                     | E       |
|          |                     |  | TRN              | 400N                      |       |                     | N       |
| 103.     | T108                | SADDLE ROAD EXTENSION, HAWAII  |                  |                           |       |                     |         |
|          |                     | DESIGN FOR A NEW ROADWAY AND/OR REALIGNMENT AND EXTENDING THE SADDLE ROAD FROM THE HILO TERMINUS TO THE QUEEN KAAHUMANU HIGHWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.                               |                  |                           |       |                     |         |
|          |                     | DESIGN   |                  |                           |       |                     | 3,000   |
|          |                     | TOTAL FUNDING  | TRN              |                           | E     |                     | 600E    |
|          |                     |  | TRN              |                           | N     |                     | 2,400N  |
| 104.     | T110                | HAWAII BELT ROAD ROCKFALL PROTECTION AT MAULUA, LAUPAHOEHOE, AND KAAWALII, HAWAII  |                  |                           |       |                     |         |
|          |                     | CONSTRUCTION FOR SLOPE PROTECTION ALONG ROUTE 19, HAWAII BELT ROAD IN THE VICINITY OF MAULUA GULCH, LAUPAHOEHOE GULCH, AND KAAWALII GULCH. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.                     |                  |                           |       |                     |         |
|          |                     | CONSTRUCTION   |                  | 10,000                    |       |                     |         |
|          |                     | TOTAL FUNDING  | TRN              | 2,000E                    |       |                     | E       |
|          |                     |  | TRN              | 8,000N                    |       |                     | N       |

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CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |        |                     |        |
|----------|---------------------|--|------------------|---------------------------|--------|---------------------|--------|
|          |                     |  |                  | FISCAL YEAR 2005-06       | M O F  | FISCAL YEAR 2006-07 | M O F  |
| 105.     | T116                | KAWAIHAE ROAD BYPASS, WAIMEA TO KAWAIHAE, HAWAII   |                  |                           |        |                     |        |
|          |                     | DESIGN FOR A NEW ROAD FROM WAIMEA TO KAWAIHAE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.   |                  |                           |        |                     |        |
|          |                     | DESIGN   |                  |                           |        |                     | 2,500  |
|          |                     | TOTAL FUNDING  | TRN              |                           | E      |                     | 500E   |
|          |                     |  | TRN              |                           | N      |                     | 2,000N |
| 106.     | T118                | TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES, HAWAII  |                  |                           |        |                     |        |
|          |                     | DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRUCTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURN LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS. |                  |                           |        |                     |        |
|          |                     | DESIGN   |                  |                           | 150    |                     | 150    |
|          |                     | CONSTRUCTION   |                  |                           | 950    |                     | 950    |
|          |                     | TOTAL FUNDING  | TRN              |                           | 1,100E |                     | 1,100E |
| 107.     | T119                | WAIMEA BASEYARD, WASTEWATER SYSTEM, HAWAII   |                  |                           |        |                     |        |
|          |                     | CONSTRUCTION TO PROVIDE WASTEWATER IMPROVEMENTS FOR THE WAIMEA BASEYARD NECESSARY TO MEET DEPARTMENT OF HEALTH COMPLIANCE.   |                  |                           |        |                     |        |
|          |                     | CONSTRUCTION   |                  |                           | 200    |                     |        |
|          |                     | TOTAL FUNDING  | TRN              |                           | 200E   |                     | E      |
| 108.     | T125                | AKONI PULE HIGHWAY, REALIGNMENT AND WIDENING AT AAMAKOA GULCH, HAWAII  |                  |                           |        |                     |        |
|          |                     | DESIGN FOR REALIGNMENT AND WIDENING OF AKONI PULE HIGHWAY ON THE POLOLU VALLEY SIDE OF AAMAKOA GULCH, INCLUDING INSTALLING GUARDRAILS AND SIGNS.   |                  |                           |        |                     |        |
|          |                     | DESIGN   |                  |                           | 250    |                     |        |
|          |                     | TOTAL FUNDING  | TRN              |                           | 250E   |                     | E      |
| 109.     | T126                | KUAKINI HIGHWAY ROADWAY AND DRAINAGE IMPROVEMENTS, VICINITY OF KAMEHAMEHA III ROAD, HAWAII   |                  |                           |        |                     |        |
|          |                     | CONSTRUCTION FOR BUILDING UP PAVEMENT CROSS SLOPE TO IMPROVE DRAINAGE AND OTHER INCIDENTAL IMPROVEMENTS.   |                  |                           |        |                     |        |
|          |                     | CONSTRUCTION   |                  |                           | 1,300  |                     |        |
|          |                     | TOTAL FUNDING  | TRN              |                           | 1,300E |                     | E      |
| 110.     | T127                | KEAAU-PAHOA ROAD SHOULDER LANE CONVERSION, KEAAU BYPASS ROAD TO SHOWER DRIVE, HAWAII   |                  |                           |        |                     |        |
|          |                     | CONSTRUCTION FOR RECONSTRUCTING AND WIDENING THE EXISTING SHOULDER AND CONSTRUCTING NEW SHOULDERS ON THE INBOUND SIDE OF THE HIGHWAY. THIS PROJECT IS DEEMED   |                  |                           |        |                     |        |



CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |         |                     |        |
|----------|---------------------|--|------------------|---------------------------|---------|---------------------|--------|
|          |                     |  |                  | FISCAL YEAR 2005-06       | M O F   | FISCAL YEAR 2006-07 | M O F  |
|          |                     | NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.   |                  |                           |         |                     | 6,600  |
|          |                     | CONSTRUCTION   |                  |                           |         |                     | 1,320E |
|          |                     | TOTAL FUNDING  | TRN              |                           | E       |                     | 5,280N |
|          |                     |  | TRN              |                           | N       |                     |        |
| 111.     | T129                | SADDLE ROAD IMPROVEMENTS, HAWAII   |                  |                           |         |                     |        |
|          |                     | DESIGN AND CONSTRUCTION FOR WIDENING AND/OR REALIGNING THE EXISTING TWO-LANE HIGHWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.  |                  |                           |         |                     |        |
|          |                     | DESIGN   |                  |                           |         | 1,000               |        |
|          |                     | CONSTRUCTION   |                  |                           |         | 29,000              | 8,000  |
|          |                     | TOTAL FUNDING  | TRN              |                           | 1 E     |                     | 1 E    |
|          |                     |  | TRN              |                           | 29,999N |                     | 7,999N |
| 112.     | T132                | VOLCANO ROAD INTERSECTION IMPROVEMENTS AT KULANI ROAD, HAWAII  |                  |                           |         |                     |        |
|          |                     | DESIGN FOR CONSTRUCTING LEFT TURN LANES AT THE KULANI ROAD INTERSECTION.   |                  |                           |         |                     |        |
|          |                     | DESIGN   |                  |                           |         | 450                 |        |
|          |                     | TOTAL FUNDING  | TRN              |                           | 450E    |                     | E      |
| 113.     | T134                | HONOKAA BASEYARD IMPROVEMENTS, HAWAII  |                  |                           |         |                     |        |
|          |                     | CONSTRUCTION FOR IMPROVEMENTS TO HONOKAA BASEYARD, INCLUDING EXTENDING THE EXISTING GARAGE AND CONSTRUCTING A STORAGE ROOM.  |                  |                           |         |                     |        |
|          |                     | CONSTRUCTION   |                  |                           |         |                     | 800    |
|          |                     | TOTAL FUNDING  | TRN              |                           | E       |                     | 800E   |
| 114.     | T137                | VOLCANO ROAD WIDENING, KEAAU TO PAAHANA, HAWAII  |                  |                           |         |                     |        |
|          |                     | DESIGN AND CONSTRUCTION FOR THE WIDENING OF VOLCANO ROAD FROM KEAAU TO PAAHANA INCLUDING THE INSTALLATION OF SIGNS, PAVEMENT MARKINGS, DRAINAGE, GUARDRAILS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |                  |                           |         |                     |        |
|          |                     | DESIGN   |                  |                           |         | 500                 |        |
|          |                     | CONSTRUCTION   |                  |                           |         |                     | 2,000  |
|          |                     | TOTAL FUNDING  | TRN              |                           | 100E    |                     | 400E   |
|          |                     |  | TRN              |                           | 400N    |                     | 1,600N |
| 115.     |                     | MAKUU FARMERS MARKET, HIGHWAY ACCESS IMPROVEMENT, HAWAII   |                  |                           |         |                     |        |
|          |                     | DESIGN AND CONSTRUCTION TO IMPROVE ACCESS FROM KEAAU-PAHOA ROAD (HIGHWAY 130) TO THE MAKUU FARMERS MARKET IN PUNA, HAWAII.   |                  |                           |         |                     |        |
|          |                     | DESIGN   |                  |                           |         | 150                 |        |
|          |                     | CONSTRUCTION   |                  |                           |         | 500                 |        |
|          |                     | TOTAL FUNDING  | TRN              |                           | 650E    |                     | E      |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.                      | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |        |                     |        |
|-------------------------------|---------------------|---|------------------|---------------------------|--------|---------------------|--------|
|                               |                     |   |                  | FISCAL YEAR 2005-06       | M O F  | FISCAL YEAR 2006-07 | M O F  |
| <b>TRN531 - MAUI HIGHWAYS</b> |                     |   |                  |                           |        |                     |        |
| 116.                          | V048                | GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, MAUI   |                  |                           |        |                     |        |
|                               |                     | DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING EXISTING GUARDRAILS, END TERMINALS, TRANSITIONS, BRIDGE RAILINGS, BRIDGE ENDPOSTS AND CRASH ATTENUATORS; AND RECONSTRUCTING AND PAVING SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.                           |                  |                           |        |                     |        |
|                               |                     | DESIGN  |                  |                           | 100    |                     | 100    |
|                               |                     | CONSTRUCTION  |                  |                           |        |                     | 1,000  |
|                               |                     | TOTAL FUNDING   | TRN              |                           | 20E    |                     | 220E   |
|                               |                     |   | TRN              |                           | 80N    |                     | 880N   |
| 117.                          | V053                | HONOAPILANI HIGHWAY, REVETMENT PROTECTION AT LAUNIPOKO, MAUI  |                  |                           |        |                     |        |
|                               |                     | CONSTRUCTION FOR THE REVETMENT AT LAUNIPOKO TO PROTECT THE HONOAPILANI HIGHWAY FROM SHORELINE EROSION.  |                  |                           |        |                     |        |
|                               |                     | CONSTRUCTION  |                  |                           | 1,800  |                     |        |
|                               |                     | TOTAL FUNDING   | TRN              |                           | 1,800E |                     | E      |
| 118.                          | V075                | HANA HIGHWAY ROCKFALL MITIGATION, HUELO TO HANA, MAUI   |                  |                           |        |                     |        |
|                               |                     | CONSTRUCTION TO REMOVE OVERHANGING, PROTRUDING, AND/OR UNSTABLE ROCKS FROM THE SLOPES ABOVE HANA HIGHWAY AT VARIOUS LOCATIONS.  |                  |                           |        |                     |        |
|                               |                     | CONSTRUCTION  |                  |                           | 4,700  |                     |        |
|                               |                     | TOTAL FUNDING   | TRN              |                           | 4,700E |                     | E      |
| 119.                          | V083                | TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES, MAUI   |                  |                           |        |                     |        |
|                               |                     | DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRUCTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS. |                  |                           |        |                     |        |
|                               |                     | DESIGN  |                  |                           | 100    |                     | 100    |
|                               |                     | CONSTRUCTION  |                  |                           | 900    |                     | 900    |
|                               |                     | TOTAL FUNDING   | TRN              |                           | 1,000E |                     | 1,000E |
| 120.                          | V089                | HANA HIGHWAY IMPROVEMENTS, UAKEA ROAD TO KEAWA PLACE, MAUI  |                  |                           |        |                     |        |
|                               |                     | CONSTRUCTION FOR WIDENING THE EXISTING ROADWAY AND CONSTRUCT SAFETY IMPROVEMENTS.   |                  |                           |        |                     |        |
|                               |                     | CONSTRUCTION  |                  |                           |        |                     | 765    |
|                               |                     | TOTAL FUNDING   | TRN              |                           |        | E                   | 765E   |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.                         | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |         |                     |        |
|----------------------------------|---------------------|--|------------------|---------------------------|---------|---------------------|--------|
|                                  |                     |  |                  | FISCAL YEAR 2005-06       | M O F   | FISCAL YEAR 2006-07 | M O F  |
| 121.                             | V092                | HONOAPIILANI HIGHWAY SHORELINE IMPROVEMENTS, VICINITY OF OLOWALU, MAUI   |                  |                           |         |                     |        |
|                                  |                     | DESIGN FOR SHORELINE IMPROVEMENTS TO INCLUDE SHORELINE EROSION MITIGATION AND ROADWAY WORK.  |                  |                           |         |                     |        |
|                                  |                     | DESIGN   |                  |                           |         |                     | 350    |
|                                  |                     | TOTAL FUNDING  | TRN              |                           | E       |                     | 350E   |
| 122.                             | V094                | HONOAPIILANI HIGHWAY, REPLACEMENT OF HONOLUA BRIDGE, MAUI  |                  |                           |         |                     |        |
|                                  |                     | LAND ACQUISITION FOR REPLACEMENT OF A CONCRETE TEE-BEAM BRIDGE ON HONOAPIILANI HIGHWAY IN THE VICINITY OF HONOLUA BAY TO INCLUDE BRIDGE RAILINGS AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |                  |                           |         |                     |        |
|                                  |                     | LAND   |                  |                           |         |                     | 600    |
|                                  |                     | TOTAL FUNDING  | TRN              |                           | E       |                     | 120E   |
|                                  |                     |  | TRN              |                           | N       |                     | 480N   |
| 123.                             | VP0104              | HONOAPIILANI HIGHWAY WIDENING, LAHAINALUNA ROAD TO SOUTH OF FRONT STREET, MAUI   |                  |                           |         |                     |        |
|                                  |                     | CONSTRUCTION FOR THE WIDENING OF HONOAPIILANI HIGHWAY FROM TWO TO FOUR LANES FROM THE VICINITY OF LAHAINALUNA ROAD TO AHOLO ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.  |                  |                           |         |                     |        |
|                                  |                     | CONSTRUCTION   |                  |                           |         |                     | 9,000  |
|                                  |                     | TOTAL FUNDING  | TRN              |                           | E       |                     | 1,800E |
|                                  |                     |  | TRN              |                           | N       |                     | 7,200N |
| 124.                             |                     | HALEAKALA HIGHWAY WIDENING, MAUI   |                  |                           |         |                     |        |
|                                  |                     | DESIGN AND CONSTRUCTION FOR THE WIDENING OF HALEAKALA HIGHWAY FROM THREE TO FOUR LANES.  |                  |                           |         |                     |        |
|                                  |                     | DESIGN   |                  |                           |         | 1,000               |        |
|                                  |                     | CONSTRUCTION   |                  |                           |         | 11,000              |        |
|                                  |                     | TOTAL FUNDING  | TRN              |                           | 12,000E |                     | E      |
| <b>TRN541 - MOLOKAI HIGHWAYS</b> |                     |  |                  |                           |         |                     |        |
| 125.                             | W008                | GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, MOLOKAI   |                  |                           |         |                     |        |
|                                  |                     | DESIGN AND CONSTRUCTION TO BUILD ASPHALT CONCRETE PAVED SHOULDERS AND INSTALLING AND/OR UPGRADING EXISTING GUARDRAILS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.   |                  |                           |         |                     |        |
|                                  |                     | DESIGN   |                  |                           |         | 100                 |        |
|                                  |                     | CONSTRUCTION   |                  |                           |         | 600                 | 700    |
|                                  |                     | TOTAL FUNDING  | TRN              |                           | 220E    |                     | 140E   |
|                                  |                     |  | TRN              |                           | 480N    |                     | 560N   |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.                       | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |         |
|--------------------------------|---------------------|---|------------------|---------------------------|-------|---------------------|---------|
|                                |                     |   |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F   |
| 126.                           | W011                | KAMEHAMEHA V HIGHWAY, KAWELA STREAM BRIDGE REPLACEMENT, MOLOKAI   |                  |                           |       |                     |         |
|                                |                     | LAND ACQUISITION FOR REPLACEMENT OF KAWELA STREAM BRIDGE TO INCLUDE SIDEWALKS AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.                   |                  |                           |       |                     |         |
|                                |                     | LAND  |                  |                           | 620   |                     |         |
|                                |                     | TOTAL FUNDING   | TRN              |                           | 125E  |                     | E       |
|                                |                     |   | TRN              |                           | 495N  |                     | N       |
| 127.                           | W013                | KAMEHAMEHA V HIGHWAY, MAKAKUPAIA STREAM BRIDGE REPLACEMENT, MOLOKAI   |                  |                           |       |                     |         |
|                                |                     | LAND ACQUISITION AND DESIGN FOR THE REPLACEMENT OF MAKAKUPAIA BRIDGE TO INCLUDE BRIDGE RAILINGS AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |                  |                           |       |                     |         |
|                                |                     | LAND  |                  |                           |       |                     | 475     |
|                                |                     | DESIGN  |                  |                           | 650   |                     |         |
|                                |                     | TOTAL FUNDING   | TRN              |                           | 130E  |                     | 95E     |
|                                |                     |   | TRN              |                           | 520N  |                     | 380N    |
| 128.                           | W014                | KAMEHAMEHA V HIGHWAY, CULVERT IMPROVEMENTS AT MILE POST 12.5, MOLOKAI   |                  |                           |       |                     |         |
|                                |                     | LAND ACQUISITION AND DESIGN TO UPGRADE THE EXISTING CULVERT, OTHER DRAINAGE FACILITIES, SHOULDERS, AND OTHER IMPROVEMENTS IN THE VICINITY OF MILE POST 12.5.  |                  |                           |       |                     |         |
|                                |                     | LAND  |                  |                           | 50    |                     |         |
|                                |                     | DESIGN  |                  |                           | 40    |                     |         |
|                                |                     | TOTAL FUNDING   | TRN              |                           | 90E   |                     | E       |
| <b>TRN561 - KAUAI HIGHWAYS</b> |                     |   |                  |                           |       |                     |         |
| 129.                           | X006                | KAUMUALII HIGHWAY IMPROVEMENTS, LIHUE TO WEST OF MALUHIA ROAD, KAUAI  |                  |                           |       |                     |         |
|                                |                     | CONSTRUCTION FOR WIDENING OF KAUMUALII HIGHWAY, LIHUE TO VICINITY OF KIPU, FROM TWO TO FOUR LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.                      |                  |                           |       |                     |         |
|                                |                     | CONSTRUCTION  |                  |                           |       |                     | 31,500  |
|                                |                     | TOTAL FUNDING   | TRN              |                           |       | E                   | 6,300E  |
|                                |                     |   | TRN              |                           |       | N                   | 25,200N |
| 130.                           | X007                | KUHIO HIGHWAY IMPROVEMENTS, HANAMAULU TO KAPAA, KAUAI   |                  |                           |       |                     |         |
|                                |                     | DESIGN FOR A NEW KAPAA BYPASS AND/OR WIDENED SECTIONS OF KUHIO HIGHWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.   |                  |                           |       |                     |         |
|                                |                     | DESIGN  |                  |                           |       |                     | 4,000   |
|                                |                     | TOTAL FUNDING   | TRN              |                           |       | E                   | 800E    |
|                                |                     |   | TRN              |                           |       | N                   | 3,200N  |

## CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |        |                     |        |
|----------|---------------------|---|------------------|---------------------------|--------|---------------------|--------|
|          |                     |   |                  | FISCAL YEAR 2005-06       | M O F  | FISCAL YEAR 2006-07 | M O F  |
| 131.     | X051                | GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, KAUAI  |                  |                           |        |                     |        |
|          |                     | DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING OF GUARDRAILS, END TERMINALS, TRANSITIONS, BRIDGE RAILINGS, BRIDGE ENDPOSTS AND CRASH ATTENUATORS; AND RECONSTRUCTING AND PAVING SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.                                 |                  |                           |        |                     |        |
|          |                     | DESIGN  |                  |                           | 100    |                     |        |
|          |                     | CONSTRUCTION  |                  |                           | 900    |                     | 1,000  |
|          |                     | TOTAL FUNDING   | TRN              |                           | 200E   |                     | 200E   |
|          |                     |   | TRN              |                           | 800N   |                     | 800N   |
| 132.     | X100                | KUHIO HIGHWAY, RETAINING WALLS AT LUMAHAI AND WAINIHA, KAUAI  |                  |                           |        |                     |        |
|          |                     | LAND ACQUISITION FOR RETAINING WALLS TO PREVENT SLIPPAGE AND EROSION OF THE ROADWAY.  |                  |                           |        |                     |        |
|          |                     | LAND  |                  |                           | 100    |                     |        |
|          |                     | TOTAL FUNDING   | TRN              |                           | 100E   |                     | E      |
| 133.     | X112                | TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAYS, KAUAI  |                  |                           |        |                     |        |
|          |                     | DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRUCTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS. |                  |                           |        |                     |        |
|          |                     | DESIGN  |                  |                           | 250    |                     | 250    |
|          |                     | CONSTRUCTION  |                  |                           | 750    |                     | 750    |
|          |                     | TOTAL FUNDING   | TRN              |                           | 1,000E |                     | 1,000E |
| 134.     | X118                | KUAMOO ROAD, RETAINING WALL IN THE VICINITY OF MILE POST 1.1, KAUAI   |                  |                           |        |                     |        |
|          |                     | CONSTRUCTION FOR REPLACING AN EXISTING WALL INCLUDING INSTALLATION OF GUARDRAILS AND OTHER IMPROVEMENTS IN THE VICINITY OF MILE POST 1.1.   |                  |                           |        |                     |        |
|          |                     | CONSTRUCTION  |                  |                           | 935    |                     |        |
|          |                     | TOTAL FUNDING   | TRN              |                           | 935E   |                     | E      |
| 135.     | X120                | KAUMUALII HIGHWAY, KUHIO HIGHWAY, AND KUAMOO ROAD RETAINING WALLS, KAUAI  |                  |                           |        |                     |        |
|          |                     | CONSTRUCTION FOR CONSTRUCTING AND/OR RECONSTRUCTING RETAINING WALLS AND OTHER APPURTENANT IMPROVEMENTS AT VARIOUS LOCATIONS.  |                  |                           |        |                     |        |
|          |                     | CONSTRUCTION  |                  |                           | 1,225  |                     |        |
|          |                     | TOTAL FUNDING   | TRN              |                           | 1,225E |                     | E      |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |        |
|----------|---------------------|---|------------------|---------------------------|-------|---------------------|--------|
|          |                     |   |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F  |
| 136.     | X121                | KUHIO HIGHWAY, REPLACEMENT OF WAINIHA BRIDGES NOS. 1, 2, AND 3, KAUAI   |                  |                           |       |                     |        |
|          |                     | CONSTRUCTION FOR REPLACEMENT OF WAINIHA BRIDGES NOS. 1, 2, AND 3. PROJECT WILL CONSTRUCT BRIDGE APPROACHES, DETOUR ROADS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.   |                  |                           |       |                     |        |
|          |                     | CONSTRUCTION  |                  | 25,000                    |       |                     |        |
|          |                     | TOTAL FUNDING   | TRN              | 5,000E                    |       |                     | E      |
|          |                     |   | TRN              | 20,000N                   |       |                     | N      |
| 137.     | X123                | WAIMEA CANYON DRIVE/KOKEE ROAD IMPROVEMENTS, MILE POST 0 TO MILE POST 14, KAUAI   |                  |                           |       |                     |        |
|          |                     | DESIGN FOR CONSTRUCTING PAVED SHOULDERS, INSTALLING GUARDRAILS, PAVEMENT MARKINGS AND SIGNS, AND OTHER IMPROVEMENTS IN THE VICINITY OF MILE POST 0 TO MILE POST 14.   |                  |                           |       |                     |        |
|          |                     | DESIGN  |                  | 500                       |       |                     |        |
|          |                     | TOTAL FUNDING   | TRN              | 500E                      |       |                     | E      |
| 138.     | X124                | KUHIO HIGHWAY, KAPALA BRIDGE REPLACEMENT, KAUAI   |                  |                           |       |                     |        |
|          |                     | LAND ACQUISITION FOR REPLACEMENT OF A MULTI-TEE BEAM REINFORCED CONCRETE GIRDER BRIDGE ON KUHIO HIGHWAY IN THE VICINITY OF KAPALA TO INCLUDE PEDESTRIAN WALKWAYS, BRIDGE RAILINGS AND APPROACHES, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |                  |                           |       |                     |        |
|          |                     | LAND  |                  |                           |       |                     | 750    |
|          |                     | TOTAL FUNDING   | TRN              |                           | E     |                     | 150E   |
|          |                     |   | TRN              |                           | N     |                     | 600N   |
| 139.     | X127                | KAPULE HIGHWAY/RICE STREET/WAAPA ROAD IMPROVEMENTS AND STRENGTHENING/WIDENING OF NAWILIWILI BRIDGE, KAUAI   |                  |                           |       |                     |        |
|          |                     | LAND ACQUISITION AND DESIGN FOR THE IMPROVEMENT OF: KAPULE HIGHWAY, RICE STREET, AND WAAPA ROAD; AND STRENGTHENING/WIDENING OF NAWILIWILI BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.   |                  |                           |       |                     |        |
|          |                     | LAND  |                  |                           |       |                     | 800    |
|          |                     | DESIGN  |                  |                           |       |                     | 700    |
|          |                     | TOTAL FUNDING   | TRN              |                           | E     |                     | 300E   |
|          |                     |   | TRN              |                           | N     |                     | 1,200N |
| 140.     | X128                | KUHIO HIGHWAY, REPLACEMENT OF WAIOLI, WAIPA, AND WAIKOKO STREAM BRIDGES, KAUAI  |                  |                           |       |                     |        |
|          |                     | LAND ACQUISITION AND DESIGN FOR THE REPLACEMENT OF WAIOLI STREAM BRIDGE, WAIPA STREAM BRIDGE, AND WAIKOKO STREAM BRIDGE ON KUHIO HIGHWAY ROUTE 560. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.   |                  |                           |       |                     |        |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.                                | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |        |
|---|---------------------|--|------------------|---------------------------|-------|---------------------|--------|
|   |                     |  |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F  |
|   |                     | LAND DESIGN  |                  |                           |       | 1,750               | 650    |
|   |                     | TOTAL FUNDING  | TRN              |                           |       | 350E                | 130E   |
|   |                     |  | TRN              |                           |       | 1,400N              | 520N   |
| <b>TRN595 - HIGHWAYS ADMINISTRATION</b> |                     |  |                  |                           |       |                     |        |
| 141.                                    | X091                | PEDESTRIAN FACILITIES AND ADA COMPLIANCE AT VARIOUS LOCATIONS, STATEWIDE   |                  |                           |       |                     |        |
|   |                     | DESIGN AND CONSTRUCTION FOR CONSTRUCTING PEDESTRIAN FACILITIES AND INSTALLING AND/OR UPGRADING CURB RAMPS AND BUS STOPS ON STATE HIGHWAYS AND UPGRADING THE HIGHWAYS DIVISION BUILDING FACILITIES TO MEET COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA). THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |                  |                           |       |                     |        |
|   |                     | DESIGN   |                  |                           |       | 200                 | 200    |
|   |                     | CONSTRUCTION   |                  |                           |       | 800                 | 800    |
|   |                     | TOTAL FUNDING  | TRN              |                           |       | 200E                | 200E   |
|   |                     |  | TRN              |                           |       | 800N                | 800N   |
| 142.                                    | X096                | CLOSE-OUT OF HIGHWAY RIGHTS-OF-WAY, STATEWIDE  |                  |                           |       |                     |        |
|   |                     | LAND ACQUISITION FOR COMPLETION OF ACQUISITION OF OUTSTANDING RIGHT-OF-WAY PARCELS ON PREVIOUSLY CONSTRUCTED PROJECTS. ALSO, TO PROVIDE FOR THE TRANSFER OF REAL ESTATE INTERESTS FROM THE STATE TO THE COUNTIES FOR THE IMPLEMENTATION OF THE STATE HIGHWAY SYSTEM.   |                  |                           |       |                     |        |
|   |                     | LAND   |                  |                           |       | 300                 | 300    |
|   |                     | TOTAL FUNDING  | TRN              |                           |       | 300E                | 300E   |
| 143.                                    | X097                | MISCELLANEOUS DRAINAGE IMPROVEMENTS, STATEWIDE   |                  |                           |       |                     |        |
|   |                     | DESIGN AND CONSTRUCTION FOR DRAINAGE IMPROVEMENTS TO EXISTING HIGHWAY FACILITIES INCLUDING INSTALLATION OF DRAINAGE FACILITIES, CATCH BASINS, GRATED DROP INLETS, LINED SWALES, HEADWALLS AND CULVERTS AT VARIOUS LOCATIONS.   |                  |                           |       |                     |        |
|   |                     | DESIGN   |                  |                           |       | 100                 | 100    |
|   |                     | CONSTRUCTION   |                  |                           |       | 1,250               | 1,250  |
|   |                     | TOTAL FUNDING  | TRN              |                           |       | 1,350E              | 1,350E |
| 144.                                    | X098                | IMPROVEMENTS TO INTERSECTIONS AND HIGHWAY FACILITIES, STATEWIDE  |                  |                           |       |                     |        |
|   |                     | DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR TRAFFIC SAFETY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.  |                  |                           |       |                     |        |
|   |                     | DESIGN   |                  |                           |       | 375                 |        |
|   |                     | CONSTRUCTION   |                  |                           |       |                     | 3,000  |
|   |                     | TOTAL FUNDING  | TRN              |                           |       | 375E                | 600E   |
|   |                     |  | TRN              |                           |       | N                   | 2,400N |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |        |                     |        |
|----------|---------------------|--|------------------|---------------------------|--------|---------------------|--------|
|          |                     |  |                  | FISCAL YEAR 2005-06       | M O F  | FISCAL YEAR 2006-07 | M O F  |
| 145.     | X099                | HIGHWAY PLANNING, STATEWIDE  |                  |                           |        |                     |        |
|          |                     | PLANS FOR ROAD USE, ROAD LIFE, ECONOMIC STUDIES, RESEARCH, ADVANCE PLANNING AND SCOPING OF FEDERAL AID AND NON FEDERAL AID HIGHWAY PROJECTS AND PROGRAMS, AND STUDIES REQUIRED BY THE FEDERAL HIGHWAYS ADMINISTRATION (FHWA). THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.  |                  |                           |        |                     |        |
|          |                     | PLANS  |                  |                           | 1,000  |                     | 1,000  |
|          |                     | TOTAL FUNDING  | TRN              |                           | 200E   |                     | 200E   |
|          |                     |  | TRN              |                           | 800N   |                     | 800N   |
| 146.     | X221                | TRAFFIC SIGNAL MODERNIZATION AT VARIOUS LOCATIONS, STATEWIDE   |                  |                           |        |                     |        |
|          |                     | DESIGN AND CONSTRUCTION FOR REPLACING EXISTING TRAFFIC SIGNAL SYSTEMS; PROVIDING INTERCONNECTION OF SIGNALIZED INTERSECTIONS; UPGRADING EXISTING TRAFFIC SIGNAL SYSTEMS TO MEET CURRENT AMERICANS WITH DISABILITIES ACT (ADA) STANDARDS; AND INSTALLING CLOSED CIRCUIT TELEVISION FOR THE FREEWAY MANAGEMENT SYSTEM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |                  |                           |        |                     |        |
|          |                     | DESIGN   |                  |                           | 300    |                     |        |
|          |                     | CONSTRUCTION   |                  |                           | 3,300  |                     | 1,500  |
|          |                     | TOTAL FUNDING  | TRN              |                           | 960E   |                     | 300E   |
|          |                     |  | TRN              |                           | 2,640N |                     | 1,200N |
| 147.     | X222                | SEISMIC RETROFIT OF VARIOUS BRIDGES, STATEWIDE   |                  |                           |        |                     |        |
|          |                     | DESIGN AND CONSTRUCTION FOR SEISMIC RETROFIT OF VARIOUS BRIDGES ON OAHU AND HAWAII. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.  |                  |                           |        |                     |        |
|          |                     | DESIGN   |                  |                           |        |                     | 500    |
|          |                     | CONSTRUCTION   |                  |                           | 8,000  |                     | 500    |
|          |                     | TOTAL FUNDING  | TRN              |                           | 1,600E |                     | 200E   |
|          |                     |  | TRN              |                           | 6,400N |                     | 800N   |
| 148.     | X224                | HIGHWAY SHORELINE PROTECTION, STATEWIDE  |                  |                           |        |                     |        |
|          |                     | DESIGN FOR SHORELINE PROTECTION IMPROVEMENTS OF EXISTING STATE HIGHWAY FACILITIES, INCLUDING SHORELINE PROTECTION STRUCTURES, RELOCATION AND REALIGNMENT OF THE HIGHWAY AND BEACH FILL/NOURISHMENT.  |                  |                           |        |                     |        |
|          |                     | DESIGN   |                  |                           | 550    |                     | 1,000  |
|          |                     | TOTAL FUNDING  | TRN              |                           | 550E   |                     | 1,000E |
| 149.     | X225                | HIGHWAYS DIVISION CAPITAL IMPROVEMENT PROGRAM STAFF COSTS, STATEWIDE   |                  |                           |        |                     |        |
|          |                     | PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR   |                  |                           |        |                     |        |



CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |          |                     |          |
|----------|---------------------|---|------------------|---------------------------|----------|---------------------|----------|
|          |                     |   |                  | FISCAL YEAR 2005-06       | M O F    | FISCAL YEAR 2006-07 | M O F    |
|          |                     | THE DEPARTMENT OF TRANSPORTATION'S HIGHWAYS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM PROJECT RELATED POSITIONS.   |                  |                           |          |                     |          |
|          |                     |   |                  |                           | 1        |                     | 1        |
|          |                     |   |                  |                           | 1        |                     | 1        |
|          |                     |   |                  |                           | 1        |                     | 1        |
|          |                     |   |                  |                           | 23,997   |                     | 23,997   |
|          |                     | TOTAL FUNDING   | TRN              |                           | 18,000 B |                     | 18,000 B |
|          |                     |   | TRN              |                           | 6,000 N  |                     | 6,000 N  |
| 150.     | X227                | ROCKFALL PROTECTION/SLOPE STABILIZATION AT VARIOUS LOCATIONS, STATEWIDE   |                  |                           |          |                     |          |
|          |                     | DESIGN FOR ROCKFALL/SLOPE PROTECTION AND SLOPE STABILIZATION MITIGATION MEASURES AT VARIOUS LOCATIONS STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.  |                  |                           |          |                     |          |
|          |                     |   |                  |                           | 2,000    |                     | 1,000    |
|          |                     | TOTAL FUNDING   | TRN              |                           | 400 E    |                     | 200 E    |
|          |                     |   | TRN              |                           | 1,600 N  |                     | 800 N    |
| 151.     | X230                | BIKEWAY IMPROVEMENTS AT VARIOUS LOCATIONS, STATEWIDE  |                  |                           |          |                     |          |
|          |                     | DESIGN AND CONSTRUCTION TO PROVIDE AND IMPROVE BICYCLE FACILITIES ON STATE HIGHWAYS. THE FEDERAL LEGISLATION TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY (TEA-21) PROVIDES FOR IMPROVING CONDITIONS AND SAFETY FOR THE BICYCLING MODE OF TRAVEL. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |                  |                           |          |                     |          |
|          |                     |   |                  |                           | 400      |                     | 500      |
|          |                     |   |                  |                           | 1,000    |                     | 1,000    |
|          |                     | TOTAL FUNDING   | TRN              |                           | 280 E    |                     | 300 E    |
|          |                     |   | TRN              |                           | 1,120 N  |                     | 1,200 N  |
| 152.     | X231                | HIGHWAYS DIVISION MATERIALS TESTING AND RESEARCH FACILITY RENOVATION, OAHU  |                  |                           |          |                     |          |
|          |                     | LAND ACQUISITION AND CONSTRUCTION FOR THE RENOVATION AND IMPROVEMENTS TO THE HIGHWAYS DIVISION MATERIALS TESTING AND RESEARCH FACILITY.   |                  |                           |          |                     |          |
|          |                     |   |                  |                           | 150      |                     |          |
|          |                     |   |                  |                           | 3,700    |                     |          |
|          |                     | TOTAL FUNDING   | TRN              |                           | 3,850 E  |                     | E        |
| 153.     | X232                | ALIHAIMOKU HALE BUILDING ELECTRICAL UPGRADING, OAHU   |                  |                           |          |                     |          |
|          |                     | DESIGN AND CONSTRUCTION TO UPGRADE THE ELECTRICAL DISTRIBUTION SYSTEM TO CURRENT ELECTRICAL DEMANDS AND STANDARDS.  |                  |                           |          |                     |          |
|          |                     |   |                  |                           | 250      |                     |          |
|          |                     |   |                  |                           |          |                     | 1,650    |
|          |                     | TOTAL FUNDING   | TRN              |                           | 250 E    |                     | 1,650 E  |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.   | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |         |
|--|---------------------|--|------------------|---------------------------|-------|---------------------|---------|
|  |                     |  |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F   |
| 154.   | X233                | DESIGN MANAGEMENT SUPPORT, STATEWIDE   |                  |                           |       |                     |         |
|  |                     | DESIGN FOR DESIGN MANAGEMENT SUPPORT SERVICE COSTS FOR IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S HIGHWAY DIVISION.   |                  |                           |       |                     |         |
|  |                     | DESIGN   |                  | 1,250                     |       |                     |         |
|  |                     | TOTAL FUNDING  | TRN              | 1,250B                    |       |                     | B       |
| 155.   | X234                | INTERSECTION AND ROADWAY IMPROVEMENTS TO VARIOUS HARBOR FACILITIES, STATEWIDE  |                  |                           |       |                     |         |
|  |                     | DESIGN AND CONSTRUCTION FOR INTERIM OR PERMANENT INTERSECTION IMPROVEMENTS INCLUDING TRAFFIC SIGNALS, STRIPING, AND OTHER IMPROVEMENTS AT VARIOUS INTERSECTIONS SERVICING HARBOR FACILITIES, STATEWIDE.  |                  |                           |       |                     |         |
|  |                     | DESIGN   |                  | 650                       |       |                     |         |
|  |                     | CONSTRUCTION   |                  | 4,300                     |       |                     |         |
|  |                     | TOTAL FUNDING  | TRN              | 4,950E                    |       |                     | E       |
| <b>D. ENVIRONMENTAL PROTECTION</b>                     |                     |  |                  |                           |       |                     |         |
| <b>HTH840 - ENVIRONMENTAL MANAGEMENT</b>               |                     |  |                  |                           |       |                     |         |
| 1.   | 840401              | WASTEWATER TREATMENT REVOLVING FUND FOR POLLUTION CONTROL, STATEWIDE   |                  |                           |       |                     |         |
|  |                     | CONSTRUCTION FOR FUNDS TO MATCH FEDERAL CAPITALIZATION GRANTS FOR WASTEWATER PROJECTS. FUNDS APPROPRIATED TO BE TRANSFERRED TO WATER POLLUTION CONTROL REVOLVING FUND ESTABLISHED PURSUANT TO CHAPTER 342D, HRS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |                  |                           |       |                     |         |
|  |                     | CONSTRUCTION   |                  | 12,317                    |       |                     | 12,317  |
|  |                     | TOTAL FUNDING  | HTH              | 2,053C                    |       |                     | 2,053C  |
|  |                     |  | HTH              | 10,264N                   |       |                     | 10,264N |
| 2.   | 840402              | SAFE DRINKING WATER REVOLVING FUND, STATEWIDE  |                  |                           |       |                     |         |
|  |                     | CONSTRUCTION FOR FUNDS TO MATCH FEDERAL CAPITALIZATION GRANTS TO COMPLY WITH THE SAFE DRINKING WATER ACT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.  |                  |                           |       |                     |         |
|  |                     | CONSTRUCTION   |                  | 9,964                     |       |                     | 9,964   |
|  |                     | TOTAL FUNDING  | HTH              | 1,661C                    |       |                     | 1,661C  |
|  |                     |  | HTH              | 8,303N                    |       |                     | 8,303N  |
| <b>LNR906 - LNR - NATURAL AND PHYSICAL ENVIRONMENT</b> |                     |  |                  |                           |       |                     |         |
| 3.   | J00                 | ADA PUBLIC ACCESSIBILITY AT DLNR FACILITIES, STATEWIDE   |                  |                           |       |                     |         |
|  |                     | CONSTRUCTION TO PROVIDE PUBLIC ACCESSIBILITY AT DLNR FACILITIES.   |                  |                           |       |                     |         |
|  |                     | CONSTRUCTION   |                  | 4,000                     |       |                     |         |
|  |                     | TOTAL FUNDING  | LNR              | 4,000C                    |       |                     | C       |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |       |
|----------|---------------------|--|------------------|---------------------------|-------|---------------------|-------|
|          |                     |  |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F |
| 4.       | 950026              | CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE  |                  |                           |       |                     |       |
|          |                     | PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF LAND AND NATURAL RESOURCES. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS. |                  |                           |       |                     |       |
|          |                     | PLANS  |                  | 2,175                     |       | 2,175               |       |
|          |                     | TOTAL FUNDING  | LNR              | 2,175 C                   |       | 2,175 C             |       |

E. HEALTH

HTH595 - HEALTH RESOURCES ADMINISTRATION

1. WAIANAE COAST COMPREHENSIVE HEALTH CENTER, OAHU

DESIGN AND CONSTRUCTION FOR SAFETY AND SECURITY IMPROVEMENTS, AND FOR THE RENOVATION OF THE OUTPATIENT BUILDING. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

|               |     |         |   |
|---------------|-----|---------|---|
| DESIGN        |     | 446     |   |
| CONSTRUCTION  |     | 2,500   |   |
| TOTAL FUNDING | HTH | 2,946 C | C |

2. ORGAN DONOR CENTER OF HAWAII, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR EQUIPMENT TO INCREASE ORGAN AND TISSUE DONATIONS. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

|               |     |      |   |
|---------------|-----|------|---|
| DESIGN        |     | 5    |   |
| CONSTRUCTION  |     | 10   |   |
| EQUIPMENT     |     | 35   |   |
| TOTAL FUNDING | HTH | 50 C | C |

3. RONALD MCDONALD HOUSE CHARITIES, OAHU

LAND ACQUISITION TO ACQUIRE A FACILITY TO LODGE FAMILIES OF CHILDREN REQUIRING MEDICAL TREATMENT WHILE ON OAHU. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

|               |     |       |   |
|---------------|-----|-------|---|
| LAND          |     | 500   |   |
| TOTAL FUNDING | HTH | 500 C | C |

4. MOLOKAI GENERAL HOSPITAL, MOLOKAI

DESIGN AND CONSTRUCTION TO EXPAND AND IMPROVE MOLOKAI GENERAL HOSPITAL. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

|               |     |         |   |
|---------------|-----|---------|---|
| DESIGN        |     | 200     |   |
| CONSTRUCTION  |     | 1,400   |   |
| TOTAL FUNDING | HTH | 1,600 C | C |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.  | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |       |
|---|---------------------|--|------------------|---------------------------|-------|---------------------|-------|
|   |                     |  |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F |
| 5.  |                     | BAY CLINIC, INC., HAWAII   |                  |                           |       |                     |       |
|   |                     | DESIGN AND CONSTRUCTION FOR A NEW MEDICAL CLINIC AND IMPROVEMENTS TO EXISTING FACILITIES. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.   |                  |                           |       |                     |       |
|   |                     | DESIGN   |                  | 150                       |       |                     |       |
|   |                     | CONSTRUCTION   |                  | 850                       |       |                     |       |
|   |                     | TOTAL FUNDING  | HTH              | 1,000C                    |       |                     | C     |
| <b>HTH210 - HAWAII HEALTH SYSTEMS CORPORATION</b> |                     |  |                  |                           |       |                     |       |
| 6.  | 05001               | LUMP SUM CIP - LIFE SAFETY PROJECTS - FIRE PROTECTION, ROOFING, ELECTRICAL UPGRADES, STATEWIDE   |                  |                           |       |                     |       |
|   |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT TO ADDRESS LIFE SAFETY ISSUES AT VARIOUS HHSC FACILITIES. PROJECTS INCLUDE, BUT ARE NOT LIMITED TO, FIRE PROTECTION, ELECTRICAL UPGRADE, ELEVATOR RECALL SYSTEM, ROOFING, AND NURSE CALL SYSTEM UPGRADE. |                  |                           |       |                     |       |
|   |                     | DESIGN   |                  | 507                       |       | 50                  |       |
|   |                     | CONSTRUCTION   |                  | 4,208                     |       | 700                 |       |
|   |                     | EQUIPMENT  |                  | 175                       |       | 275                 |       |
|   |                     | TOTAL FUNDING  | HTH              | 4,890C                    |       | 1,025C              |       |
| 7.  | P30015              | HAWAII HEALTH SYSTEMS FOUNDATION, HAWAII   |                  |                           |       |                     |       |
|   |                     | CONSTRUCTION FOR A LONG-TERM CARE VETERANS HOME LOCATED ON THE CAMPUS OF THE HILO MEDICAL CENTER.  |                  |                           |       |                     |       |
|   |                     | CONSTRUCTION   |                  | 18,228                    |       |                     |       |
|   |                     | TOTAL FUNDING  | HTH              | 18,228N                   |       |                     | N     |
| 8.  |                     | MAUI MEMORIAL MEDICAL CENTER, ROOFING REPAIR/REPLACEMENT, MAUI   |                  |                           |       |                     |       |
|   |                     | DESIGN AND CONSTRUCTION TO REPLACE AGING AND WIND DAMAGED ROOFS.   |                  |                           |       |                     |       |
|   |                     | DESIGN   |                  | 50                        |       |                     |       |
|   |                     | CONSTRUCTION   |                  | 700                       |       |                     |       |
|   |                     | TOTAL FUNDING  | HTH              | 750C                      |       |                     | C     |
| 9.  |                     | MAUI MEMORIAL MEDICAL CENTER, PARKING STRUCTURE, MAUI  |                  |                           |       |                     |       |
|   |                     | DESIGN AND CONSTRUCTION FOR A PARKING STRUCTURE FOR MAUI MEMORIAL MEDICAL CENTER.  |                  |                           |       |                     |       |
|   |                     | DESIGN   |                  | 1,000                     |       |                     |       |
|   |                     | CONSTRUCTION   |                  | 21,000                    |       |                     |       |
|   |                     | TOTAL FUNDING  | HTH              | 22,000E                   |       |                     | E     |
| 10.   |                     | WEST MAUI MEDICAL FACILITIES, MAUI   |                  |                           |       |                     |       |
|   |                     | PLANS AND DESIGN FOR LONG-TERM CARE FACILITIES, ANCILLARY SUPPORT BUILDINGS, AND MEDICAL CLINIC IN WEST MAUI.  |                  |                           |       |                     |       |
|   |                     | PLANS  |                  | 350                       |       |                     |       |
|   |                     | DESIGN   |                  | 650                       |       |                     |       |
|   |                     | TOTAL FUNDING  | HTH              | 1,000C                    |       |                     | C     |

## CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.  | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |        |
|---|---------------------|---|------------------|---------------------------|-------|---------------------|--------|
|   |                     |   |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F  |
| 11.   |                     | MAUI MEMORIAL MEDICAL CENTER, HELIPORT, MAUI  |                  |                           |       |                     |        |
|   |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A HELIPORT TO TRANSPORT PATIENTS.   |                  |                           |       |                     |        |
|   |                     | DESIGN  |                  |                           | 1     |                     |        |
|   |                     | CONSTRUCTION  |                  |                           | 748   |                     |        |
|   |                     | EQUIPMENT   |                  |                           | 1     |                     |        |
|   |                     | TOTAL FUNDING   | HTH              |                           | 750C  |                     | C      |
| <b>HTH430 - ADULT MENTAL HEALTH - INPATIENT</b> |                     |   |                  |                           |       |                     |        |
| 12.   | 430601              | HAWAII STATE HOSPITAL, VARIOUS IMPROVEMENTS TO THE COMPLEX, OAHU  |                  |                           |       |                     |        |
|   |                     | DESIGN AND CONSTRUCTION FOR VARIOUS IMPROVEMENTS TO THE HOSPITAL COMPLEX. IMPROVEMENTS MAY INCLUDE REROOFING, RENOVATIONS, AIR CONDITIONING UPGRADES, AND OTHER VARIOUS IMPROVEMENTS.   |                  |                           |       |                     |        |
|   |                     | DESIGN  |                  |                           | 54    |                     | 1      |
|   |                     | CONSTRUCTION  |                  |                           | 1     |                     | 409    |
|   |                     | TOTAL FUNDING   | AGS              |                           | 55C   |                     | 410C   |
| <b>HTH907 - GENERAL ADMINISTRATION</b>          |                     |   |                  |                           |       |                     |        |
| 13.   | 907601              | VARIOUS IMPROVEMENTS TO DEPARTMENT OF HEALTH FACILITIES, STATEWIDE  |                  |                           |       |                     |        |
|   |                     | DESIGN AND CONSTRUCTION FOR VARIOUS IMPROVEMENTS TO DOH FACILITIES STATEWIDE. IMPROVEMENTS MAY INCLUDE REROOFING, RENOVATIONS, AIR CONDITIONING UPGRADES, AND OTHER VARIOUS IMPROVEMENTS.   |                  |                           |       |                     |        |
|   |                     | DESIGN  |                  |                           | 420   |                     |        |
|   |                     | CONSTRUCTION  |                  |                           | 1     |                     | 2,854  |
|   |                     | TOTAL FUNDING   | AGS              |                           | 421C  |                     | 2,854C |
| <b>F. SOCIAL SERVICES</b>                       |                     |   |                  |                           |       |                     |        |
| <b>HMS501 - YOUTH SERVICES ADMINISTRATION</b>   |                     |   |                  |                           |       |                     |        |
| 1.  |                     | BOYS AND GIRLS CLUB OF THE BIG ISLAND, HAWAII   |                  |                           |       |                     |        |
|   |                     | DESIGN AND CONSTRUCTION FOR FACILITY RENOVATIONS. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.  |                  |                           |       |                     |        |
|   |                     | DESIGN  |                  |                           | 10    |                     |        |
|   |                     | CONSTRUCTION  |                  |                           | 190   |                     |        |
|   |                     | TOTAL FUNDING   | HMS              |                           | 200C  |                     | C      |
| <b>HMS502 - YOUTH SERVICES PROGRAM</b>          |                     |   |                  |                           |       |                     |        |
| 2.  |                     | BIG BROTHERS BIG SISTERS OF HONOLULU, INC., OAHU  |                  |                           |       |                     |        |
|   |                     | LAND ACQUISITION, DESIGN, AND CONSTRUCTION TO ACQUIRE AND IMPROVE A FACILITY FOR AN ADMINISTRATIVE HEADQUARTERS AND RELATED PROGRAMS FOR BIG BROTHERS BIG SISTERS OF HONOLULU. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS. |                  |                           |       |                     |        |
|   |                     | LAND  |                  |                           | 498   |                     |        |
|   |                     | DESIGN  |                  |                           | 1     |                     |        |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.                                   | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |       |
|--|---------------------|---|------------------|---------------------------|-------|---------------------|-------|
|  |                     |   |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F |
|  |                     | CONSTRUCTION  |                  |                           | 1     |                     |       |
|  |                     | TOTAL FUNDING   | HMS              | 500                       | C     |                     |       |
| <b>HMS503 - YOUTH RESIDENTIAL PROGRAMS</b> |                     |   |                  |                           |       |                     |       |
| 3.   |                     | HYCF, SECURITY AND INFRASTRUCTURE IMPROVEMENTS AND REPAIRS, OAHU  |                  |                           |       |                     |       |
|  |                     | DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AND REPAIRS TO THE HAWAII YOUTH CORRECTIONAL FACILITY.   |                  |                           |       |                     |       |
|  |                     | DESIGN  |                  |                           | 20    |                     |       |
|  |                     | CONSTRUCTION  |                  |                           | 80    |                     |       |
|  |                     | TOTAL FUNDING   | HMS              | 100                       | C     |                     |       |
| <b>DEF112 - SERVICES TO VETERANS</b>       |                     |   |                  |                           |       |                     |       |
| 4.   | OVS932              | HAWAII STATE VETERANS CEMETERY, OAHU  |                  |                           |       |                     |       |
|  |                     | PLANS, DESIGN, AND CONSTRUCTION FOR REPAIRS TO THE HAWAII STATE VETERANS CEMETERY. REPAIRS MAY INCLUDE, BUT NOT BE LIMITED TO, ROAD CRACK REPAIR AND MONITORING, DRAINAGE IMPROVEMENTS, AND SLOPE REPAIR ABOVE THE COLUMBARIUM. |                  |                           |       |                     |       |
|  |                     | PLANS   |                  |                           | 60    |                     |       |
|  |                     | DESIGN  |                  |                           | 60    |                     |       |
|  |                     | CONSTRUCTION  |                  |                           | 444   |                     |       |
|  |                     | TOTAL FUNDING   | AGS              | 564                       | C     |                     |       |
| 5.   |                     | NISEI VETERANS MEMORIAL CENTER, MAUI  |                  |                           |       |                     |       |
|  |                     | DESIGN AND CONSTRUCTION FOR THE ADULT DAY CARE FACILITY COMPONENT OF THE NISEI VETERANS MEMORIAL'S INTERGENERATIONAL CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.                                   |                  |                           |       |                     |       |
|  |                     | DESIGN  |                  |                           | 100   |                     |       |
|  |                     | CONSTRUCTION  |                  |                           | 1,400 |                     |       |
|  |                     | TOTAL FUNDING   | AGS              | 1,500                     | C     |                     |       |
| 6.   |                     | ARIZONA MEMORIAL MUSEUM ASSOCIATION, OAHU   |                  |                           |       |                     |       |
|  |                     | PLANS, DESIGN, AND CONSTRUCTION TO REPLACE THE MUSEUM AND VISITOR CENTER AT THE USS ARIZONA MEMORIAL. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.  |                  |                           |       |                     |       |
|  |                     | PLANS   |                  |                           | 300   |                     |       |
|  |                     | DESIGN  |                  |                           | 100   |                     |       |
|  |                     | CONSTRUCTION  |                  |                           | 100   |                     |       |
|  |                     | TOTAL FUNDING   | DEF              | 500                       | C     |                     |       |
| 7.   |                     | OAHU VETERANS CENTER, OAHU  |                  |                           |       |                     |       |
|  |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR PHASE II IMPROVEMENTS AT THE OAHU VETERANS CENTER AT FOSTER VILLAGE.  |                  |                           |       |                     |       |
|  |                     | DESIGN  |                  |                           | 50    |                     |       |
|  |                     | CONSTRUCTION  |                  |                           | 790   |                     |       |
|  |                     | EQUIPMENT   |                  |                           | 10    |                     |       |
|  |                     | TOTAL FUNDING   | DEF              | 850                       | C     |                     |       |

## CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.   | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |        |                     |        |
|--|---------------------|---|------------------|---------------------------|--------|---------------------|--------|
|  |                     |   |                  | FISCAL YEAR 2005-06       | M O F  | FISCAL YEAR 2006-07 | M O F  |
| <b>HMS601 - ADULT AND COMMUNITY CARE SERVICES BRANCH</b> |                     |   |                  |                           |        |                     |        |
| 8.   |                     | PALOLO CHINESE HOME, OAHU   |                  |                           |        |                     |        |
|  |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT TO CONSTRUCT THE PALOLO CHINESE HOME'S FOOD SERVICE COMPLEX, WELLNESS CENTER, AND SUPPORTING INFRASTRUCTURE. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS. |                  |                           |        |                     |        |
|  |                     | DESIGN  |                  |                           | 1      |                     |        |
|  |                     | CONSTRUCTION  |                  |                           | 498    |                     |        |
|  |                     | EQUIPMENT   |                  |                           | 1      |                     |        |
|  |                     | TOTAL FUNDING   | HMS              |                           | 500C   |                     | C      |
| <b>HMS220 - RENTAL HOUSING SERVICES</b>                  |                     |   |                  |                           |        |                     |        |
| 9.   | RH006               | LARGE CAPACITY CESSPOOL CONVERSIONS FOR FEDERAL AND STATE PROJECTS, STATEWIDE   |                  |                           |        |                     |        |
|  |                     | DESIGN AND CONSTRUCTION TO CLOSE AND UPGRADE HCDCH CESSPOOLS.   |                  |                           |        |                     |        |
|  |                     | DESIGN  |                  |                           | 300    |                     | 300    |
|  |                     | CONSTRUCTION  |                  |                           | 1,700  |                     | 1,700  |
|  |                     | TOTAL FUNDING   | HMS              |                           | 2,000C |                     | 2,000C |
| 10.  |                     | HANA RANCH AFFORDABLE HOUSING DEVELOPMENT, MAUI   |                  |                           |        |                     |        |
|  |                     | PLANS, DESIGN, AND CONSTRUCTION TO DEVELOP AFFORDABLE HOUSING IN HANA.  |                  |                           |        |                     |        |
|  |                     | PLANS   |                  |                           | 500    |                     |        |
|  |                     | DESIGN  |                  |                           | 250    |                     |        |
|  |                     | CONSTRUCTION  |                  |                           | 750    |                     |        |
|  |                     | TOTAL FUNDING   | HMS              |                           | 1,500C |                     | C      |
| <b>HMS229 - HCDCH ADMINISTRATION</b>                     |                     |   |                  |                           |        |                     |        |
| 11.  |                     | LUMP SUM CIP - REPAIR AND MAINTENANCE, SITE IMPROVEMENTS, AND RENOVATIONS, STATEWIDE  |                  |                           |        |                     |        |
|  |                     | DESIGN AND CONSTRUCTION FOR THE REPAIR AND MAINTENANCE, SITE IMPROVEMENTS, AND RENOVATIONS OF EXISTING HOUSING PROJECTS, STATEWIDE.   |                  |                           |        |                     |        |
|  |                     | DESIGN  |                  |                           | 500    |                     | 500    |
|  |                     | CONSTRUCTION  |                  |                           | 2,500  |                     | 1,500  |
|  |                     | TOTAL FUNDING   | HMS              |                           | 3,000C |                     | 2,000C |
| <b>HMS224 - HOMELESS SERVICES</b>                        |                     |   |                  |                           |        |                     |        |
| 12.  |                     | LEEWARD COAST HOMELESS SHELTER, OAHU  |                  |                           |        |                     |        |
|  |                     | PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR A NEW HOMELESS SHELTER FOR THE LEEWARD COAST OF OAHU.   |                  |                           |        |                     |        |
|  |                     | PLANS   |                  |                           | 1      |                     |        |
|  |                     | LAND  |                  |                           | 1      |                     |        |
|  |                     | DESIGN  |                  |                           | 1      |                     |        |
|  |                     | CONSTRUCTION  |                  |                           | 497    |                     |        |
|  |                     | TOTAL FUNDING   | HMS              |                           | 500C   |                     | C      |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.   | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |       |
|--|---------------------|--|------------------|---------------------------|-------|---------------------|-------|
|  |                     |  |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F |
| <b>HHL602 - PLANNING AND DEVELOPMENT FOR HAWAIIAN HOMESTEADS</b> |                     |  |                  |                           |       |                     |       |
| 13.  |                     | NANAKULI HAWAIIAN HOMESTEAD COMMUNITY ASSOCIATION, OAHU  |                  |                           |       |                     |       |
|  |                     | PLANS, DESIGN, AND CONSTRUCTION FOR A NEW COMMUNITY CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.   |                  |                           |       |                     |       |
|  |                     | PLANS  |                  |                           | 1     |                     |       |
|  |                     | DESIGN   |                  |                           | 1     |                     |       |
|  |                     | CONSTRUCTION   |                  |                           | 1,198 |                     |       |
|  |                     | TOTAL FUNDING  | HHL              |                           | 1,200 | C                   |       |
| 14.  |                     | HAWAII MAOLI, OAHU   |                  |                           |       |                     |       |
|  |                     | DESIGN AND CONSTRUCTION FOR A COMMUNITY CENTER FACILITY. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.  |                  |                           |       |                     |       |
|  |                     | DESIGN   |                  |                           | 25    |                     |       |
|  |                     | CONSTRUCTION   |                  |                           | 75    |                     |       |
|  |                     | TOTAL FUNDING  | HHL              |                           | 100   | C                   |       |
| 15.  |                     | WAIMANALO HAWAIIAN HOMES ASSOCIATION, OAHU   |                  |                           |       |                     |       |
|  |                     | DESIGN AND CONSTRUCTION FOR A CERTIFIED KITCHEN FACILITY AND COMPUTER TECHNOLOGY CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.                      |                  |                           |       |                     |       |
|  |                     | DESIGN   |                  |                           | 100   |                     |       |
|  |                     | CONSTRUCTION   |                  |                           | 900   |                     |       |
|  |                     | TOTAL FUNDING  | HHL              |                           | 1,000 | C                   |       |
| <b>HTH904 - EXECUTIVE OFFICE ON AGING</b>                        |                     |  |                  |                           |       |                     |       |
| 16.  |                     | PACIFIC HEALTH MINISTRY, OAHU  |                  |                           |       |                     |       |
|  |                     | LAND ACQUISITION, DESIGN, AND CONSTRUCTION TO ACQUIRE AND IMPROVE FACILITIES FOR THE PACIFIC HEALTH MINISTRY. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS. |                  |                           |       |                     |       |
|  |                     | LAND   |                  |                           | 150   |                     |       |
|  |                     | DESIGN   |                  |                           | 10    |                     |       |
|  |                     | CONSTRUCTION   |                  |                           | 40    |                     |       |
|  |                     | TOTAL FUNDING  | HTH              |                           | 200   | C                   |       |
| 17.  |                     | POHAI NANI GOOD SAMARITAN, OAHU  |                  |                           |       |                     |       |
|  |                     | PLANS, DESIGN, AND CONSTRUCTION FOR A SENIOR WELLNESS CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.   |                  |                           |       |                     |       |
|  |                     | PLANS  |                  |                           | 5     |                     |       |
|  |                     | DESIGN   |                  |                           | 20    |                     |       |
|  |                     | CONSTRUCTION   |                  |                           | 475   |                     |       |
|  |                     | TOTAL FUNDING  | HTH              |                           | 500   | C                   |       |



**CAPITAL IMPROVEMENT PROJECTS**

| ITEM NO.  | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |         |                     |       |
|---|---------------------|--|------------------|---------------------------|---------|---------------------|-------|
|   |                     |  |                  | FISCAL YEAR 2005-06       | M O F   | FISCAL YEAR 2006-07 | M O F |
| <b>HMS901 - GENERAL SUPPORT FOR SOCIAL SERVICES</b> |                     |  |                  |                           |         |                     |       |
| 18.   |                     | HALE MAKUA, MAUI   |                  |                           |         |                     |       |
|   |                     | DESIGN AND CONSTRUCTION FOR VARIOUS RENOVATIONS AND IMPROVEMENTS. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS. |                  |                           |         |                     |       |
|   |                     | DESIGN   |                  |                           | 1       |                     |       |
|   |                     | CONSTRUCTION   |                  |                           | 999     |                     |       |
|   |                     | TOTAL FUNDING  | HMS              |                           | 1,000 C |                     | C     |

**G. FORMAL EDUCATION**

**EDN100 - SCHOOL-BASED BUDGETING**

1. 000018 LUMP SUM CIP - CESSPOOL REMOVAL, STATEWIDE

DESIGN AND CONSTRUCTION FOR THE ELIMINATION OF CESSPOOLS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.

|               |     |          |          |
|---------------|-----|----------|----------|
| DESIGN        |     | 1,000    | 1,000    |
| CONSTRUCTION  |     | 10,000   | 10,000   |
| TOTAL FUNDING | EDN | 11,000 B | 11,000 B |

2. 00100001 LUMP SUM CIP - RELOCATE/CONSTRUCT TEMPORARY FACILITIES, STATEWIDE

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RELOCATION OR CONSTRUCTION OF PORTABLES EACH SCHOOL YEAR TO MEET ENROLLMENT SHIFTS, UNFORESEEN EMERGENCIES, AND TO PROVIDE TEMPORARY FACILITIES WHILE NEW SCHOOLS ARE BEING PLANNED AND/OR CONSTRUCTED.

|               |     |         |         |
|---------------|-----|---------|---------|
| DESIGN        |     | 500     | 500     |
| CONSTRUCTION  |     | 4,000   | 4,000   |
| EQUIPMENT     |     | 500     | 500     |
| TOTAL FUNDING | EDN | 5,000 B | 5,000 B |

3. 002002 LUMP SUM CIP - MINOR RENOVATIONS, STATEWIDE

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR MINOR ADDITIONS, RENOVATIONS, AND IMPROVEMENTS TO BUILDINGS AND SCHOOL SITES TO IMPROVE THE EDUCATIONAL PROGRAM AND TO CORRECT EDUCATIONAL SPECIFICATIONS DEFICIENCIES.

|               |     |         |         |
|---------------|-----|---------|---------|
| DESIGN        |     | 300     | 300     |
| CONSTRUCTION  |     | 2,400   | 2,400   |
| EQUIPMENT     |     | 300     | 300     |
| TOTAL FUNDING | EDN | 3,000 B | 3,000 B |

4. 020 LUMP SUM CIP - SCHOOL BUILDING IMPROVEMENTS, STATEWIDE

DESIGN AND CONSTRUCTION FOR THE IMPROVEMENTS OF PUBLIC SCHOOL FACILITIES, STATEWIDE. MAY INCLUDE PROJECT MANAGEMENT AND CONSTRUCTION MANAGEMENT SERVICES, ROOFING, AIR CONDITIONING, PAINTING, PLUMBING,

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |       |
|----------|---------------------|--|------------------|---------------------------|-------|---------------------|-------|
|          |                     |  |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F |
|          |                     | AND OTHER REPAIRS AND IMPROVEMENTS TO PUBLIC SCHOOL FACILITIES.  |                  |                           |       |                     |       |
|          |                     | DESIGN   |                  | 10,000                    |       | 5,000               |       |
|          |                     | CONSTRUCTION   |                  | 65,000                    |       | 20,000              |       |
|          |                     | TOTAL FUNDING  | EDN              | 75,000 B                  |       | 25,000 B            |       |
| 5.       | 0060006             | LUMP SUM CIP - ARCHITECTURAL BARRIER REMOVAL, STATEWIDE  |                  |                           |       |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR THE PROVISION OF RAMPS, ELEVATORS, AND OTHER CORRECTIVE MEASURES FOR ACCESSIBILITY OF SCHOOL FACILITIES TO HANDICAPPED PERSONS.          |                  |                           |       |                     |       |
|          |                     | DESIGN   |                  | 300                       |       | 300                 |       |
|          |                     | CONSTRUCTION   |                  | 1,700                     |       | 1,700               |       |
|          |                     | TOTAL FUNDING  | EDN              | 2,000 B                   |       | 2,000 B             |       |
| 6.       | 007071              | LUMP SUM CIP - PUBLIC ACCOMMODATIONS TRANSITION PLAN, STATEWIDE  |                  |                           |       |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR THE PROVISION OF RAMPS, ELEVATORS, AND OTHER CORRECTIVE MEASURES FOR ACCESSIBILITY OF SCHOOL FACILITIES TYPICALLY VISITED BY THE PUBLIC. |                  |                           |       |                     |       |
|          |                     | DESIGN   |                  | 250                       |       | 250                 |       |
|          |                     | CONSTRUCTION   |                  | 500                       |       | 500                 |       |
|          |                     | TOTAL FUNDING  | EDN              | 750 B                     |       | 750 B               |       |
| 7.       | 0080008             | LUMP SUM CIP - ASBESTOS/LEAD REMOVAL, STATEWIDE  |                  |                           |       |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR THE CORRECTION, IMPROVEMENT, AND RENOVATION TO ALL EXISTING SCHOOL BUILDINGS. PROJECT TO INCLUDE THE REMOVAL OF ASBESTOS AND/OR LEAD.    |                  |                           |       |                     |       |
|          |                     | DESIGN   |                  | 50                        |       | 50                  |       |
|          |                     | CONSTRUCTION   |                  | 450                       |       | 450                 |       |
|          |                     | TOTAL FUNDING  | EDN              | 500 B                     |       | 500 B               |       |
| 8.       | 000007              | LUMP SUM CIP - SPECIAL EDUCATION RENOVATIONS, STATEWIDE  |                  |                           |       |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT TO RENOVATE CLASSROOMS TO ADDRESS SPECIAL EDUCATION NEEDS.   |                  |                           |       |                     |       |
|          |                     | DESIGN   |                  | 250                       |       | 250                 |       |
|          |                     | CONSTRUCTION   |                  | 500                       |       | 500                 |       |
|          |                     | EQUIPMENT  |                  | 250                       |       | 250                 |       |
|          |                     | TOTAL FUNDING  | EDN              | 1,000 B                   |       | 1,000 B             |       |
| 9.       | 19                  | LUMP SUM CIP - GENDER EQUITY, STATEWIDE  |                  |                           |       |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR GENDER EQUITY PROJECTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.   |                  |                           |       |                     |       |
|          |                     | DESIGN   |                  | 300                       |       | 300                 |       |
|          |                     | CONSTRUCTION   |                  | 1,500                     |       | 1,500               |       |
|          |                     | EQUIPMENT  |                  | 200                       |       | 200                 |       |
|          |                     | TOTAL FUNDING  | EDN              | 2,000 B                   |       | 2,000 B             |       |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |         |                     |         |
|----------|---------------------|---|------------------|---------------------------|---------|---------------------|---------|
|          |                     |   |                  | FISCAL YEAR 2005-06       | M O F   | FISCAL YEAR 2006-07 | M O F   |
| 10.      | P00026              | LUMP SUM CIP - PLAYGROUND EQUIPMENT AND ACCESSIBILITY, STATEWIDE  |                  |                           |         |                     |         |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT TO REPLACE PLAYGROUND EQUIPMENT WHICH DO NOT MEET SAFETY STANDARDS. PROVIDE APPROPRIATE PADDING IN THE AREA OF PLAYGROUND EQUIPMENT. PROVIDE ACCESSIBILITY TO THE PLAY AREAS/EQUIPMENT PER AMERICANS WITH DISABILITIES ACT ACCESSIBILITY GUIDELINES (ADAAG); GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. |                  |                           |         |                     |         |
|          |                     | DESIGN  |                  |                           | 50      |                     | 50      |
|          |                     | CONSTRUCTION  |                  |                           | 400     |                     | 400     |
|          |                     | EQUIPMENT   |                  |                           | 300     |                     | 300     |
|          |                     | TOTAL FUNDING   | EDN              |                           | 750 B   |                     | 750 B   |
| 11.      | 00500005            | LUMP SUM CIP - FIRE PROTECTION, STATEWIDE   |                  |                           |         |                     |         |
|          |                     | DESIGN AND CONSTRUCTION FOR FIRE PROTECTION SYSTEMS AND/OR CORRECTIVE MEASURES TO ADDRESS FIRE CODE VIOLATIONS.   |                  |                           |         |                     |         |
|          |                     | DESIGN  |                  |                           | 100     |                     | 100     |
|          |                     | CONSTRUCTION  |                  |                           | 400     |                     | 400     |
|          |                     | TOTAL FUNDING   | EDN              |                           | 500 B   |                     | 500 B   |
| 12.      | 0090009             | LUMP SUM CIP - HEALTH AND SAFETY, STATEWIDE   |                  |                           |         |                     |         |
|          |                     | DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO SCHOOL FACILITIES AND GROUNDS TO MEET HEALTH, SAFETY REQUIREMENTS/LAWS AND ORDINANCES AND/OR COUNTY REQUIREMENTS.   |                  |                           |         |                     |         |
|          |                     | DESIGN  |                  |                           | 100     |                     | 100     |
|          |                     | CONSTRUCTION  |                  |                           | 400     |                     | 400     |
|          |                     | TOTAL FUNDING   | EDN              |                           | 500 B   |                     | 500 B   |
| 13.      | 000020              | LUMP SUM CIP - STRUCTURAL RENOVATIONS AND IMPROVEMENTS, STATEWIDE   |                  |                           |         |                     |         |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF SCHOOLS IN NEED OF REPAIRS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.  |                  |                           |         |                     |         |
|          |                     | DESIGN  |                  |                           | 500     |                     | 500     |
|          |                     | CONSTRUCTION  |                  |                           | 2,450   |                     | 2,450   |
|          |                     | EQUIPMENT   |                  |                           | 50      |                     | 50      |
|          |                     | TOTAL FUNDING   | EDN              |                           | 3,000 B |                     | 3,000 B |
| 14.      | 00400004            | LUMP SUM CIP - NOISE/HEAT ABATEMENT, STATEWIDE  |                  |                           |         |                     |         |
|          |                     | DESIGN AND CONSTRUCTION FOR CORRECTIVE MEASURES TO SCHOOLS AFFECTED BY EXCESSIVE NOISE AND VENTILATION PROBLEMS.  |                  |                           |         |                     |         |
|          |                     | DESIGN  |                  |                           | 300     |                     | 300     |
|          |                     | CONSTRUCTION  |                  |                           | 1,700   |                     | 1,700   |
|          |                     | TOTAL FUNDING   | EDN              |                           | 2,000 B |                     | 2,000 B |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |         |                     |         |
|----------|---------------------|---|------------------|---------------------------|---------|---------------------|---------|
|          |                     |   |                  | FISCAL YEAR 2005-06       | M O F   | FISCAL YEAR 2006-07 | M O F   |
| 15.      | 014050              | LUMP SUM CIP - ELECTRICAL UPGRADES, STATEWIDE   |                  |                           |         |                     |         |
|          |                     | DESIGN AND CONSTRUCTION FOR ELECTRICAL SYSTEM UPGRADES AT VARIOUS SCHOOLS, STATEWIDE.   |                  |                           |         |                     |         |
|          |                     |   |                  |                           | 500     |                     | 500     |
|          |                     |   |                  |                           | 1,500   |                     | 1,500   |
|          |                     |   | TOTAL FUNDING    | EDN                       | 2,000 B |                     | 2,000 B |
| 16.      | 011                 | LUMP SUM CIP - TELECOMMUNICATIONS UPGRADES, STATEWIDE   |                  |                           |         |                     |         |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TELECOMMUNICATIONS AND POWER INFRASTRUCTURE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.  |                  |                           |         |                     |         |
|          |                     |   |                  |                           | 250     |                     | 250     |
|          |                     |   |                  |                           | 1,700   |                     | 1,700   |
|          |                     |   |                  |                           | 50      |                     | 50      |
|          |                     |   | TOTAL FUNDING    | EDN                       | 2,000 B |                     | 2,000 B |
| 17.      | 18                  | LUMP SUM CIP - MASTER PLANS/LAND ACQUISITION, STATEWIDE   |                  |                           |         |                     |         |
|          |                     | PLANS AND LAND ACQUISITION FOR MASTER PLANNING, SITE SELECTION, PRE-LAND ACQUISITION STUDIES, ACQUISITION OF SMALL PARCELS, FEASIBILITY STUDIES TO MEET FUTURE AND UNFORESEEN NEEDS, AND CIP ASSISTANCE FROM CONSULTANTS IN PROVIDING COST ESTIMATES.                 |                  |                           |         |                     |         |
|          |                     |   |                  |                           | 845     |                     | 245     |
|          |                     |   |                  |                           | 5       |                     | 5       |
|          |                     |   | TOTAL FUNDING    | EDN                       | 850 B   |                     | 250 B   |
| 18.      | 000010              | LUMP SUM CIP - PROJECT ADJUSTMENT FUND, STATEWIDE   |                  |                           |         |                     |         |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A CONTINGENCY FUND FOR PROJECT ADJUSTMENT PURPOSES SUBJECT TO THE PROVISIONS OF THE APPROPRIATIONS ACT. OTHER DEPARTMENT OF EDUCATION PROJECTS WITHIN THIS ACT WITH UNREQUIRED BALANCES MAY BE TRANSFERRED INTO THIS PROJECT. |                  |                           |         |                     |         |
|          |                     |   |                  |                           | 100     |                     | 100     |
|          |                     |   |                  |                           | 300     |                     | 300     |
|          |                     |   |                  |                           | 100     |                     | 100     |
|          |                     |   | TOTAL FUNDING    | EDN                       | 500 B   |                     | 500 B   |
| 19.      | 014                 | LUMP SUM CIP - CAPITAL IMPROVEMENTS PROGRAM COSTS, STATEWIDE  |                  |                           |         |                     |         |
|          |                     | PLANS FOR WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF EDUCATION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CIP RELATED POSITIONS.                         |                  |                           |         |                     |         |
|          |                     |   |                  |                           | 400     |                     | 400     |
|          |                     |   | TOTAL FUNDING    | EDN                       | 400 B   |                     | 400 B   |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |        |                     |       |
|----------|---------------------|--|------------------|---------------------------|--------|---------------------|-------|
|          |                     |  |                  | FISCAL YEAR 2005-06       | M O F  | FISCAL YEAR 2006-07 | M O F |
| 20.      | 000060              | LUMP SUM CIP - STATE/DISTRICT RELOCATIONS/IMPROVEMENTS, STATEWIDE  |                  |                           |        |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR STATE AND DISTRICT OFFICE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. |                  |                           |        |                     |       |
|          |                     | DESIGN   |                  |                           | 35     |                     | 35    |
|          |                     | CONSTRUCTION   |                  |                           | 180    |                     | 180   |
|          |                     | EQUIPMENT  |                  |                           | 35     |                     | 35    |
|          |                     | TOTAL FUNDING  | EDN              |                           | 250B   |                     | 250B  |
| 21.      |                     | AIEA ELEMENTARY SCHOOL, OAHU   |                  |                           |        |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR AIR CONDITIONING UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.                          |                  |                           |        |                     |       |
|          |                     | DESIGN   |                  |                           | 200    |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 1,000  |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 1,200B |                     | B     |
| 22.      |                     | AIEA INTERMEDIATE SCHOOL, OAHU   |                  |                           |        |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR A BUS STOP OVERHANG; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.                                |                  |                           |        |                     |       |
|          |                     | DESIGN   |                  |                           | 15     |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 85     |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 100B   |                     | B     |
| 23.      |                     | AIEA INTERMEDIATE SCHOOL, OAHU   |                  |                           |        |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR ELECTRICAL SYSTEM UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.                         |                  |                           |        |                     |       |
|          |                     | DESIGN   |                  |                           | 100    |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 550    |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 650B   |                     | B     |
| 24.      |                     | AIEA INTERMEDIATE SCHOOL, OAHU   |                  |                           |        |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR PORTABLE CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.                    |                  |                           |        |                     |       |
|          |                     | DESIGN   |                  |                           | 39     |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 360    |                     |       |
|          |                     | EQUIPMENT  |                  |                           | 1      |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 400B   |                     | B     |
| 25.      |                     | ALA WAI ELEMENTARY SCHOOL, OAHU  |                  |                           |        |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR DRAINAGE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.                              |                  |                           |        |                     |       |
|          |                     | DESIGN   |                  |                           | 100    |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 500    |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 600B   |                     | B     |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |          |                     |       |
|----------|---------------------|--|------------------|---------------------------|----------|---------------------|-------|
|          |                     |  |                  | FISCAL YEAR 2005-06       | M O F    | FISCAL YEAR 2006-07 | M O F |
| 26.      |                     | ANUENUE ELEMENTARY SCHOOL, OAHU  |                  |                           |          |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A PORTABLE CLASSROOM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.         |                  |                           |          |                     |       |
|          |                     | DESIGN   |                  |                           | 25       |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 199      |                     |       |
|          |                     | EQUIPMENT  |                  |                           | 1        |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 225 B    |                     | B     |
| 27.      |                     | AUGUST AHRENS ELEMENTARY SCHOOL, OAHU  |                  |                           |          |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR DRAINAGE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.                    |                  |                           |          |                     |       |
|          |                     | DESIGN   |                  |                           | 1        |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 299      |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 300 B    |                     | B     |
| 28.      |                     | AUGUST AHRENS ELEMENTARY SCHOOL, OAHU  |                  |                           |          |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR ELECTRICAL SYSTEM UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.               |                  |                           |          |                     |       |
|          |                     | DESIGN   |                  |                           | 100      |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 1,000    |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 1,100 B  |                     | B     |
| 29.      | 400060              | BALDWIN HIGH SCHOOL, MAUI  |                  |                           |          |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW OR EXPANDED LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.    |                  |                           |          |                     |       |
|          |                     | DESIGN   |                  |                           | 765      |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 9,500    |                     |       |
|          |                     | EQUIPMENT  |                  |                           | 25       |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 10,290 B |                     | B     |
| 30.      | 252014              | CAMPBELL HIGH SCHOOL, OAHU   |                  |                           |          |                     |       |
|          |                     | DESIGN FOR AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.                               |                  |                           |          |                     |       |
|          |                     | DESIGN   |                  |                           | 575      |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 575 B    |                     | B     |
| 31.      |                     | CASTLE HIGH SCHOOL, OAHU   |                  |                           |          |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF AN ALL WEATHER TRACK; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. |                  |                           |          |                     |       |
|          |                     | DESIGN   |                  |                           | 50       |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 730      |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 780 B    |                     | B     |
| 32.      |                     | FARRINGTON HIGH SCHOOL, OAHU   |                  |                           |          |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF AN ALL WEATHER TRACK;  |                  |                           |          |                     |       |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |         |                     |       |
|----------|---------------------|--|------------------|---------------------------|---------|---------------------|-------|
|          |                     |  |                  | FISCAL YEAR 2005-06       | M O F   | FISCAL YEAR 2006-07 | M O F |
|          |                     | GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.   |                  |                           |         |                     |       |
|          |                     | DESIGN   |                  |                           | 35      |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 650     |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 685 B   |                     | B     |
| 33.      |                     | HALEIWA ELEMENTARY SCHOOL, OAHU  |                  |                           |         |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR THE EXPANSION AND IMPROVEMENT OF THE TEACHERS' WORKROOM AREA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.                                     |                  |                           |         |                     |       |
|          |                     | DESIGN   |                  |                           | 10      |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 140     |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 150 B   |                     | B     |
| 34.      |                     | HANA HIGH SCHOOL, MAUI   |                  |                           |         |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR THE UPGRADE OF THE ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.   |                  |                           |         |                     |       |
|          |                     | DESIGN   |                  |                           | 100     |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 400     |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 500 B   |                     | B     |
| 35.      |                     | HAULA ELEMENTARY SCHOOL, OAHU  |                  |                           |         |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ELECTRICAL SYSTEM UPGRADES; TELECOMMUNICATIONS AND POWER INFRASTRUCTURE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. |                  |                           |         |                     |       |
|          |                     | DESIGN   |                  |                           | 80      |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 719     |                     |       |
|          |                     | EQUIPMENT  |                  |                           | 1       |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 800 B   |                     | B     |
| 36.      |                     | HELEMANO ELEMENTARY SCHOOL, OAHU   |                  |                           |         |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR CONCRETE SIDEWALKS FRONTING THE SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.   |                  |                           |         |                     |       |
|          |                     | DESIGN   |                  |                           | 10      |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 145     |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 155 B   |                     | B     |
| 37.      | 208B52              | HELEMANO ELEMENTARY SCHOOL, OAHU   |                  |                           |         |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE EXPANSION OF THE CAFETERIA AND RENOVATION OF EXISTING FACILITIES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.                 |                  |                           |         |                     |       |
|          |                     | DESIGN   |                  |                           | 200     |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 1,750   |                     |       |
|          |                     | EQUIPMENT  |                  |                           | 50      |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 2,000 B |                     | B     |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |       |
|----------|---------------------|---|------------------|---------------------------|-------|---------------------|-------|
|          |                     |   |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F |
| 38.      |                     | HELEMANO ELEMENTARY SCHOOL, OAHU  |                  |                           |       |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR A CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.  |                  |                           |       |                     |       |
|          |                     | DESIGN  |                  | 499                       |       |                     |       |
|          |                     | CONSTRUCTION  |                  | 1                         |       |                     |       |
|          |                     | TOTAL FUNDING   | EDN              | 500                       | B     |                     | B     |
| 39.      |                     | HICKAM ELEMENTARY SCHOOL, OAHU  |                  |                           |       |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW OR EXPANDED LIBRARY AND NEW OR EXPANDED ADMINISTRATION BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. |                  |                           |       |                     |       |
|          |                     | DESIGN  |                  | 600                       |       |                     |       |
|          |                     | CONSTRUCTION  |                  | 6,970                     |       |                     |       |
|          |                     | EQUIPMENT   |                  | 100                       |       |                     |       |
|          |                     | TOTAL FUNDING   | EDN              | 7,670                     | B     |                     | B     |
| 40.      |                     | HOKULANI ELEMENTARY SCHOOL, OAHU  |                  |                           |       |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR ELECTRICAL SYSTEM UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.  |                  |                           |       |                     |       |
|          |                     | DESIGN  |                  | 60                        |       |                     |       |
|          |                     | CONSTRUCTION  |                  | 340                       |       |                     |       |
|          |                     | TOTAL FUNDING   | EDN              | 400                       | B     |                     | B     |
| 41.      |                     | HOLUALOA ELEMENTARY SCHOOL, HAWAII  |                  |                           |       |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR TELECOMMUNICATIONS UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.   |                  |                           |       |                     |       |
|          |                     | DESIGN  |                  | 1                         |       |                     |       |
|          |                     | CONSTRUCTION  |                  | 299                       |       |                     |       |
|          |                     | TOTAL FUNDING   | EDN              | 300                       | B     |                     | B     |
| 42.      |                     | HONOWAI ELEMENTARY SCHOOL, OAHU   |                  |                           |       |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AIR CONDITIONING UPGRADES FOR THE LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.                             |                  |                           |       |                     |       |
|          |                     | DESIGN  |                  | 1                         |       |                     |       |
|          |                     | CONSTRUCTION  |                  | 122                       |       |                     |       |
|          |                     | EQUIPMENT   |                  | 1                         |       |                     |       |
|          |                     | TOTAL FUNDING   | EDN              | 124                       | B     |                     | B     |
| 43.      |                     | ILIMA INTERMEDIATE SCHOOL, OAHU   |                  |                           |       |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR ELECTRICAL SYSTEM UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.  |                  |                           |       |                     |       |
|          |                     | DESIGN  |                  | 100                       |       |                     |       |
|          |                     | CONSTRUCTION  |                  | 1,200                     |       |                     |       |
|          |                     | TOTAL FUNDING   | EDN              | 1,300                     | B     |                     | B     |



CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |         |                     |       |
|----------|---------------------|--|------------------|---------------------------|---------|---------------------|-------|
|          |                     |  |                  | FISCAL YEAR 2005-06       | M O F   | FISCAL YEAR 2006-07 | M O F |
| 44.      |                     | KAAHUMANU ELEMENTARY SCHOOL, OAHU  |                  |                           |         |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REPAVEMENT OF THE PLAYCOURT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.  |                  |                           |         |                     |       |
|          |                     | DESIGN   |                  |                           | 1       |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 73      |                     |       |
|          |                     | EQUIPMENT  |                  |                           | 1       |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 75 B    |                     | B     |
| 45.      |                     | KAAHUMANU ELEMENTARY SCHOOL, OAHU  |                  |                           |         |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE UPPER GRADE PLAYGROUND; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.   |                  |                           |         |                     |       |
|          |                     | DESIGN   |                  |                           | 1       |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 88      |                     |       |
|          |                     | EQUIPMENT  |                  |                           | 1       |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 90 B    |                     | B     |
| 46.      |                     | KAHALUU ELEMENTARY SCHOOL, OAHU  |                  |                           |         |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ELECTRICAL SYSTEM UPGRADES; TELECOMMUNICATIONS AND POWER INFRASTRUCTURE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. |                  |                           |         |                     |       |
|          |                     | DESIGN   |                  |                           | 80      |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 719     |                     |       |
|          |                     | EQUIPMENT  |                  |                           | 1       |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 800 B   |                     | B     |
| 47.      |                     | KAHUKU HIGH AND INTERMEDIATE SCHOOL, OAHU  |                  |                           |         |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A PORTABLE CLASSROOM; DEMOLITION OF EXISTING PORTABLE SPRUNG STRUCTURE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.               |                  |                           |         |                     |       |
|          |                     | DESIGN   |                  |                           | 25      |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 219     |                     |       |
|          |                     | EQUIPMENT  |                  |                           | 6       |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 250 B   |                     | B     |
| 48.      |                     | KAIMUKI HIGH SCHOOL, OAHU  |                  |                           |         |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR A MEDIA CENTER; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.   |                  |                           |         |                     |       |
|          |                     | DESIGN   |                  |                           | 1       |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 299     |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 300 B   |                     | B     |
| 49.      |                     | KALAKAUA MIDDLE SCHOOL, OAHU   |                  |                           |         |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR THE REPAIR AND IMPROVEMENT OF SCHOOL WALLS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.   |                  |                           |         |                     |       |
|          |                     | DESIGN   |                  |                           | 181     |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 2,000   |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 2,181 B |                     | B     |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |        |                     |       |
|----------|---------------------|--|------------------|---------------------------|--------|---------------------|-------|
|          |                     |  |                  | FISCAL YEAR 2005-06       | M O F  | FISCAL YEAR 2006-07 | M O F |
| 50.      |                     | KALIHI KAI ELEMENTARY SCHOOL, OAHU   |                  |                           |        |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ELECTRICAL SYSTEM UPGRADES AND REPLACEMENT OF THE BELL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.            |                  |                           |        |                     |       |
|          |                     | DESIGN   |                  |                           | 1      |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 198    |                     |       |
|          |                     | EQUIPMENT  |                  |                           | 1      |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 200B   |                     | B     |
| 51.      |                     | KALIHI UKA ELEMENTARY SCHOOL, OAHU   |                  |                           |        |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR THE RENOVATION OF RESTROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.  |                  |                           |        |                     |       |
|          |                     | DESIGN   |                  |                           | 1      |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 499    |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 500B   |                     | B     |
| 52.      |                     | KALIHI WAENA ELEMENTARY SCHOOL, OAHU   |                  |                           |        |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR PAVED PARKING STALLS ADJACENT TO BUILDING H; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.  |                  |                           |        |                     |       |
|          |                     | DESIGN   |                  |                           | 10     |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 40     |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 50B    |                     | B     |
| 53.      |                     | KAMAILE ELEMENTARY SCHOOL, OAHU  |                  |                           |        |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE AIR CONDITIONING OF PORTABLES, AND UPGRADES TO THE ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. |                  |                           |        |                     |       |
|          |                     | DESIGN   |                  |                           | 100    |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 750    |                     |       |
|          |                     | EQUIPMENT  |                  |                           | 50     |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 900B   |                     | B     |
| 54.      |                     | KAPOLEI HIGH SCHOOL, OAHU  |                  |                           |        |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE ATHLETIC COMPLEX; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.   |                  |                           |        |                     |       |
|          |                     | DESIGN   |                  |                           | 50     |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 5,249  |                     |       |
|          |                     | EQUIPMENT  |                  |                           | 1      |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 5,300B |                     | B     |
| 55.      |                     | KAUNAKAKAI ELEMENTARY SCHOOL, MOLOKAI  |                  |                           |        |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR ELECTRICAL SYSTEM UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.   |                  |                           |        |                     |       |
|          |                     | DESIGN   |                  |                           | 100    |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 400    |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 500B   |                     | B     |

## CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |         |                     |       |
|----------|---------------------|--|------------------|---------------------------|---------|---------------------|-------|
|          |                     |  |                  | FISCAL YEAR 2005-06       | M O F   | FISCAL YEAR 2006-07 | M O F |
| 56.      |                     | KAWANANAKOA MIDDLE SCHOOL, OAHU  |                  |                           |         |                     |       |
|          |                     | DESIGN AND CONSTRUCTION TO REPLACE THE BELL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.                                     |                  |                           |         |                     |       |
|          |                     | DESIGN   |                  |                           | 1       |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 144     |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 145 B   |                     | B     |
| 57.      |                     | KEAAU MIDDLE SCHOOL, HAWAII  |                  |                           |         |                     |       |
|          |                     | DESIGN FOR AN EIGHT CLASSROOM BUILDING; DEMOLITION OF BUILDING B; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.                       |                  |                           |         |                     |       |
|          |                     | DESIGN   |                  |                           | 645     |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 645 B   |                     | B     |
| 58.      |                     | KIHEI ELEMENTARY SCHOOL, MAUI  |                  |                           |         |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR VARIOUS RENOVATIONS AND IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.                       |                  |                           |         |                     |       |
|          |                     | DESIGN   |                  |                           | 100     |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 1,900   |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 2,000 B |                     | B     |
| 59.      | 459B51              | KILAUEA ELEMENTARY SCHOOL, KAUAI   |                  |                           |         |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A CAFETERIA AND/OR RELOCATE EXISTING CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. |                  |                           |         |                     |       |
|          |                     | DESIGN   |                  |                           | 325     |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 2,600   |                     |       |
|          |                     | EQUIPMENT  |                  |                           | 75      |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 3,000 B |                     | B     |
| 60.      |                     | KING INTERMEDIATE SCHOOL, OAHU   |                  |                           |         |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR ADDITIONAL PARKING AND COVERED AREA FOR BUS STOP; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.           |                  |                           |         |                     |       |
|          |                     | DESIGN   |                  |                           | 100     |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 900     |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 1,000 B |                     | B     |
| 61.      |                     | KING KAMEHAMEHA III ELEMENTARY SCHOOL, MAUI  |                  |                           |         |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR PORTABLE CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.                            |                  |                           |         |                     |       |
|          |                     | DESIGN   |                  |                           | 24      |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 225     |                     |       |
|          |                     | EQUIPMENT  |                  |                           | 1       |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 250 B   |                     | B     |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |         |                     |       |
|----------|---------------------|---|------------------|---------------------------|---------|---------------------|-------|
|          |                     |   |                  | FISCAL YEAR 2005-06       | M O F   | FISCAL YEAR 2006-07 | M O F |
| 62.      |                     | LAHAINALUNA HIGH SCHOOL, MAUI   |                  |                           |         |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE EXPANSION OF THE CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.  |                  |                           |         |                     |       |
|          |                     | DESIGN  |                  |                           | 100     |                     |       |
|          |                     | CONSTRUCTION  |                  |                           | 732     |                     |       |
|          |                     | EQUIPMENT   |                  |                           | 1       |                     |       |
|          |                     | TOTAL FUNDING   | EDN              |                           | 833 B   |                     | B     |
| 63.      |                     | LEIHOKU ELEMENTARY SCHOOL, OAHU   |                  |                           |         |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE ADMINISTRATION AND LIBRARY BUILDINGS AND OTHER VARIOUS SCHOOL IMPROVEMENTS, INCLUDING AIR CONDITIONING UPGRADES, ELECTRICAL SYSTEM UPGRADES, TELECOMMUNICATIONS AND POWER INFRASTRUCTURE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. |                  |                           |         |                     |       |
|          |                     | DESIGN  |                  |                           | 80      |                     |       |
|          |                     | CONSTRUCTION  |                  |                           | 1,124   |                     |       |
|          |                     | EQUIPMENT   |                  |                           | 1       |                     |       |
|          |                     | TOTAL FUNDING   | EDN              |                           | 1,205 B |                     | B     |
| 64.      |                     | LEILEHUA HIGH SCHOOL, OAHU  |                  |                           |         |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ELECTRICAL SYSTEM UPGRADES; TELECOMMUNICATIONS AND POWER INFRASTRUCTURE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.  |                  |                           |         |                     |       |
|          |                     | DESIGN  |                  |                           | 199     |                     |       |
|          |                     | CONSTRUCTION  |                  |                           | 1,800   |                     |       |
|          |                     | EQUIPMENT   |                  |                           | 1       |                     |       |
|          |                     | TOTAL FUNDING   | EDN              |                           | 2,000 B |                     | B     |
| 65.      |                     | LIKELIKE ELEMENTARY SCHOOL, OAHU  |                  |                           |         |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR VARIOUS IMPROVEMENTS; INCLUDES FIELD IMPROVEMENTS AND AIR CONDITIONING UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.   |                  |                           |         |                     |       |
|          |                     | DESIGN  |                  |                           | 10      |                     |       |
|          |                     | CONSTRUCTION  |                  |                           | 60      |                     |       |
|          |                     | TOTAL FUNDING   | EDN              |                           | 70 B    |                     | B     |
| 66.      |                     | LINAPUNI ELEMENTARY SCHOOL, OAHU  |                  |                           |         |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR PLAY AREA IMPROVEMENTS; INCLUDES RESURFACING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.  |                  |                           |         |                     |       |
|          |                     | DESIGN  |                  |                           | 5       |                     |       |
|          |                     | CONSTRUCTION  |                  |                           | 20      |                     |       |
|          |                     | TOTAL FUNDING   | EDN              |                           | 25 B    |                     | B     |

## CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |        |                     |       |
|----------|---------------------|--|------------------|---------------------------|--------|---------------------|-------|
|          |                     |  |                  | FISCAL YEAR 2005-06       | M O F  | FISCAL YEAR 2006-07 | M O F |
| 67.      |                     | LINCOLN ELEMENTARY SCHOOL, OAHU  |                  |                           |        |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AIR CONDITIONING UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.  |                  |                           |        |                     |       |
|          |                     | DESIGN   |                  |                           | 100    |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 2,150  |                     |       |
|          |                     | EQUIPMENT  |                  |                           | 50     |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 2,300B |                     | B     |
| 68.      |                     | LUNALILO ELEMENTARY SCHOOL, OAHU   |                  |                           |        |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR THE UPGRADE OF THE ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.   |                  |                           |        |                     |       |
|          |                     | DESIGN   |                  |                           | 1      |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 299    |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 300B   |                     | B     |
| 69.      |                     | MAKAHA ELEMENTARY SCHOOL, OAHU   |                  |                           |        |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR AN ELEVATOR AND OTHER CORRECTIVE MEASURES FOR ACCESSIBILITY OF SCHOOL FACILITIES TO STUDENTS WITH DISABILITIES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.   |                  |                           |        |                     |       |
|          |                     | DESIGN   |                  |                           | 75     |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 475    |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 550B   |                     | B     |
| 70.      |                     | MANANA ELEMENTARY SCHOOL, OAHU   |                  |                           |        |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR RAMPS AND OTHER CORRECTIVE MEASURES FOR ACCESSIBILITY OF SCHOOL FACILITIES TO STUDENTS WITH DISABILITIES; INCLUDES IMPROVEMENTS TO BUILDING K AND BUILDING J; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. |                  |                           |        |                     |       |
|          |                     | DESIGN   |                  |                           | 12     |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 30     |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 42B    |                     | B     |
| 71.      | 851051              | MAUI LANI ELEMENTARY SCHOOL, MAUI  |                  |                           |        |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR VARIOUS IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.   |                  |                           |        |                     |       |
|          |                     | DESIGN   |                  |                           | 1      |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 6,998  |                     |       |
|          |                     | EQUIPMENT  |                  |                           | 1      |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 7,000B |                     | B     |
| 72.      | 428051              | MAUI WAENA INTERMEDIATE SCHOOL, MAUI   |                  |                           |        |                     |       |
|          |                     | DESIGN FOR AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.   |                  |                           |        |                     |       |
|          |                     | DESIGN   |                  |                           | 623    |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 623B   |                     | B     |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |       |
|----------|---------------------|--|------------------|---------------------------|-------|---------------------|-------|
|          |                     |  |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F |
| 73.      |                     | MCKINLEY HIGH SCHOOL, OAHU   |                  |                           |       |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A GIRLS ATHLETIC LOCKER ROOM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. |                  |                           |       |                     |       |
|          |                     | DESIGN   |                  | 100                       |       |                     |       |
|          |                     | CONSTRUCTION   |                  | 1,899                     |       |                     |       |
|          |                     | EQUIPMENT  |                  | 1                         |       |                     |       |
|          |                     | TOTAL FUNDING  | EDN              | 2,000                     | B     |                     | B     |
| 74.      |                     | MILILANI IKE ELEMENTARY SCHOOL, OAHU   |                  |                           |       |                     |       |
|          |                     | DESIGN FOR A TEN CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.                                  |                  |                           |       |                     |       |
|          |                     | DESIGN   |                  | 100                       |       |                     |       |
|          |                     | TOTAL FUNDING  | EDN              | 100                       | B     |                     | B     |
| 75.      |                     | MILILANI IKE ELEMENTARY SCHOOL, OAHU   |                  |                           |       |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR PORTABLE CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.          |                  |                           |       |                     |       |
|          |                     | DESIGN   |                  | 500                       |       |                     |       |
|          |                     | CONSTRUCTION   |                  | 1,419                     |       |                     |       |
|          |                     | EQUIPMENT  |                  | 1                         |       |                     |       |
|          |                     | TOTAL FUNDING  | EDN              | 1,920                     | B     |                     | B     |
| 76.      | 380051              | NAALEHU ELEMENTARY AND INTERMEDIATE SCHOOL, HAWAII   |                  |                           |       |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A SIX CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.     |                  |                           |       |                     |       |
|          |                     | DESIGN   |                  | 500                       |       |                     |       |
|          |                     | CONSTRUCTION   |                  | 4,470                     |       |                     |       |
|          |                     | EQUIPMENT  |                  | 30                        |       |                     |       |
|          |                     | TOTAL FUNDING  | EDN              | 5,000                     | B     |                     | B     |
| 77.      |                     | NOELANI ELEMENTARY SCHOOL, OAHU  |                  |                           |       |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A MULTI-PURPOSE PLAY COURT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.   |                  |                           |       |                     |       |
|          |                     | DESIGN   |                  | 100                       |       |                     |       |
|          |                     | CONSTRUCTION   |                  | 1,850                     |       |                     |       |
|          |                     | EQUIPMENT  |                  | 50                        |       |                     |       |
|          |                     | TOTAL FUNDING  | EDN              | 2,000                     | B     |                     | B     |
| 78.      |                     | NUUANU ELEMENTARY SCHOOL, OAHU   |                  |                           |       |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR REROOFING OF BUILDING F AND PORTABLE P; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.   |                  |                           |       |                     |       |
|          |                     | DESIGN   |                  | 1                         |       |                     |       |
|          |                     | CONSTRUCTION   |                  | 60                        |       |                     |       |
|          |                     | TOTAL FUNDING  | EDN              | 61                        | B     |                     | B     |

## CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |         |                     |       |
|----------|---------------------|--|------------------|---------------------------|---------|---------------------|-------|
|          |                     |  |                  | FISCAL YEAR 2005-06       | M O F   | FISCAL YEAR 2006-07 | M O F |
| 79.      |                     | OCEAN POINTE ELEMENTARY SCHOOL, OAHU   |                  |                           |         |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW CLASSROOM BUILDING AND EQUIPMENT FOR THE CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.           |                  |                           |         |                     |       |
|          |                     | DESIGN   |                  |                           | 1       |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 998     |                     |       |
|          |                     | EQUIPMENT  |                  |                           | 1       |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 1,000 B |                     | B     |
| 80.      | 383151              | PAHOA HIGH SCHOOL, HAWAII  |                  |                           |         |                     |       |
|          |                     | CONSTRUCTION AND EQUIPMENT FOR A GYMNASIUM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.   |                  |                           |         |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 3,600   |                     |       |
|          |                     | EQUIPMENT  |                  |                           | 50      |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 3,650 B |                     | B     |
| 81.      |                     | PALOLO ELEMENTARY SCHOOL, OAHU   |                  |                           |         |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR THE EXPANSION OF THE PARKING LOT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.   |                  |                           |         |                     |       |
|          |                     | DESIGN   |                  |                           | 52      |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 200     |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 252 B   |                     | B     |
| 82.      |                     | PEARL CITY ELEMENTARY SCHOOL, OAHU   |                  |                           |         |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT TO EXPAND AND IMPROVE THE LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.                                      |                  |                           |         |                     |       |
|          |                     | DESIGN   |                  |                           | 100     |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 999     |                     |       |
|          |                     | EQUIPMENT  |                  |                           | 1       |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 1,100 B |                     | B     |
| 83.      |                     | POHAKEA ELEMENTARY SCHOOL, OAHU  |                  |                           |         |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR TELECOMMUNICATIONS AND PUBLIC ADDRESS SYSTEM IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.                      |                  |                           |         |                     |       |
|          |                     | DESIGN   |                  |                           | 35      |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 250     |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 285 B   |                     | B     |
| 84.      |                     | PUIHALE ELEMENTARY SCHOOL, OAHU  |                  |                           |         |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR COVERED WALKWAYS; INCLUDES A COVERED WALKWAY BETWEEN BUILDING A AND BUILDING B; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. |                  |                           |         |                     |       |
|          |                     | DESIGN   |                  |                           | 25      |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 200     |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 225 B   |                     | B     |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |         |                     |       |
|----------|---------------------|--|------------------|---------------------------|---------|---------------------|-------|
|          |                     |  |                  | FISCAL YEAR 2005-06       | M O F   | FISCAL YEAR 2006-07 | M O F |
| 85.      |                     | RED HILL ELEMENTARY SCHOOL, OAHU   |                  |                           |         |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR AIR CONDITIONING UPGRADES FOR THE ADMINISTRATION BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.  |                  |                           |         |                     |       |
|          |                     | DESIGN   |                  |                           | 15      |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 150     |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 165 B   |                     | B     |
| 86.      |                     | ROOSEVELT HIGH SCHOOL, OAHU  |                  |                           |         |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF THE AUDITORIUM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.   |                  |                           |         |                     |       |
|          |                     | DESIGN   |                  |                           | 200     |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 4,799   |                     |       |
|          |                     | EQUIPMENT  |                  |                           | 1       |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 5,000 B |                     | B     |
| 87.      |                     | ROOSEVELT HIGH SCHOOL, OAHU  |                  |                           |         |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR THE STADIUM; INCLUDES TRACK, FIELD, AND ACCESS ROAD IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.                                 |                  |                           |         |                     |       |
|          |                     | DESIGN   |                  |                           | 500     |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 4,000   |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 4,000 B |                     | B     |
|          |                     |  | EDN              |                           | 500 R   |                     | R     |
| 88.      |                     | SALT LAKE ELEMENTARY SCHOOL, OAHU  |                  |                           |         |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR THE RENOVATION OF BUILDING F; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.   |                  |                           |         |                     |       |
|          |                     | DESIGN   |                  |                           | 50      |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 750     |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 800 B   |                     | B     |
| 89.      |                     | STEVENSON MIDDLE SCHOOL, OAHU  |                  |                           |         |                     |       |
|          |                     | DESIGN AND CONSTRUCTION TO RENOVATE AND IMPROVE THE ADMINISTRATION BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.  |                  |                           |         |                     |       |
|          |                     | DESIGN   |                  |                           | 40      |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 210     |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 250 B   |                     | B     |
| 90.      |                     | WAIAHOLE ELEMENTARY SCHOOL, OAHU   |                  |                           |         |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ELECTRICAL SYSTEM UPGRADES; TELECOMMUNICATIONS AND POWER INFRASTRUCTURE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. |                  |                           |         |                     |       |
|          |                     | DESIGN   |                  |                           | 80      |                     |       |
|          |                     | CONSTRUCTION   |                  |                           | 719     |                     |       |
|          |                     | EQUIPMENT  |                  |                           | 1       |                     |       |
|          |                     | TOTAL FUNDING  | EDN              |                           | 800 B   |                     | B     |



## CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |        |                     |       |
|----------|---------------------|---|------------------|---------------------------|--------|---------------------|-------|
|          |                     |   |                  | FISCAL YEAR 2005-06       | M O F  | FISCAL YEAR 2006-07 | M O F |
| 91.      |                     | WAIAKEA ELEMENTARY SCHOOL, HAWAII   |                  |                           |        |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AIR CONDITIONING UPGRADES FOR THE LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. |                  |                           |        |                     |       |
|          |                     | DESIGN  |                  |                           | 12     |                     |       |
|          |                     | CONSTRUCTION  |                  |                           | 84     |                     |       |
|          |                     | EQUIPMENT   |                  |                           | 24     |                     |       |
|          |                     | TOTAL FUNDING   | EDN              |                           | 120B   |                     | B     |
| 92.      | 231051              | WAIALUA ELEMENTARY SCHOOL, OAHU   |                  |                           |        |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW LIBRARY/MEDIA CENTER; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.                |                  |                           |        |                     |       |
|          |                     | DESIGN  |                  |                           | 400    |                     |       |
|          |                     | CONSTRUCTION  |                  |                           | 3,530  |                     |       |
|          |                     | EQUIPMENT   |                  |                           | 70     |                     |       |
|          |                     | TOTAL FUNDING   | EDN              |                           | 4,000B |                     | B     |
| 93.      |                     | WAIANAE HIGH SCHOOL, OAHU   |                  |                           |        |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR FACILITY RENOVATIONS AND IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.                 |                  |                           |        |                     |       |
|          |                     | DESIGN  |                  |                           | 100    |                     |       |
|          |                     | CONSTRUCTION  |                  |                           | 1,000  |                     |       |
|          |                     | TOTAL FUNDING   | EDN              |                           | 1,100B |                     | B     |
| 94.      |                     | WAIKELE ELEMENTARY SCHOOL, OAHU   |                  |                           |        |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR ADDITIONAL LIGHTING ON THE LOWER CAMPUS AREA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.          |                  |                           |        |                     |       |
|          |                     | DESIGN  |                  |                           | 1      |                     |       |
|          |                     | CONSTRUCTION  |                  |                           | 99     |                     |       |
|          |                     | TOTAL FUNDING   | EDN              |                           | 100B   |                     | B     |
| 95.      |                     | WAIMALU ELEMENTARY SCHOOL, OAHU   |                  |                           |        |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE EXPANSION OF THE LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.              |                  |                           |        |                     |       |
|          |                     | DESIGN  |                  |                           | 100    |                     |       |
|          |                     | CONSTRUCTION  |                  |                           | 746    |                     |       |
|          |                     | EQUIPMENT   |                  |                           | 1      |                     |       |
|          |                     | TOTAL FUNDING   | EDN              |                           | 847B   |                     | B     |
| 96.      |                     | WAIPAHU ELEMENTARY SCHOOL, OAHU   |                  |                           |        |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR PLAYGROUND EQUIPMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.                      |                  |                           |        |                     |       |
|          |                     | DESIGN  |                  |                           | 1      |                     |       |
|          |                     | CONSTRUCTION  |                  |                           | 37     |                     |       |
|          |                     | EQUIPMENT   |                  |                           | 38     |                     |       |
|          |                     | TOTAL FUNDING   | EDN              |                           | 76B    |                     | B     |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.                         | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |         |                     |         |
|----------------------------------|---------------------|--|------------------|---------------------------|---------|---------------------|---------|
|                                  |                     |  |                  | FISCAL YEAR 2005-06       | M O F   | FISCAL YEAR 2006-07 | M O F   |
| 97.                              |                     | WAIPAHAU HIGH SCHOOL, OAHU   |                  |                           |         |                     |         |
|                                  |                     | DESIGN AND CONSTRUCTION FOR REPLACEMENT OF A FENCE FRONTING THE SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.   |                  |                           |         |                     |         |
|                                  |                     | DESIGN   |                  |                           | 5       |                     |         |
|                                  |                     | CONSTRUCTION   |                  |                           | 20      |                     |         |
|                                  |                     | TOTAL FUNDING  | EDN              |                           | 25 B    |                     | B       |
| 98.                              |                     | WEST MAUI ELEMENTARY SCHOOL, MAUI  |                  |                           |         |                     |         |
|                                  |                     | PLANS FOR A NEW ELEMENTARY SCHOOL IN WEST MAUI.  |                  |                           |         |                     |         |
|                                  |                     | PLANS  |                  |                           | 300     |                     |         |
|                                  |                     | TOTAL FUNDING  | EDN              |                           | 300 B   |                     | B       |
| <b>EDN400 - SCHOOL SUPPORT</b>   |                     |  |                  |                           |         |                     |         |
| 99.                              |                     | LUMP SUM CIP - CAPITAL IMPROVEMENTS PROGRAM COSTS, STATEWIDE   |                  |                           |         |                     |         |
|                                  |                     | PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT, PROJECT-FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF EDUCATION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS. |                  |                           |         |                     |         |
|                                  |                     | PLANS  |                  |                           | 2,955   |                     | 2,955   |
|                                  |                     | LAND   |                  |                           | 1       |                     | 1       |
|                                  |                     | DESIGN   |                  |                           | 1       |                     | 1       |
|                                  |                     | CONSTRUCTION   |                  |                           | 1       |                     | 1       |
|                                  |                     | EQUIPMENT  |                  |                           | 1       |                     | 1       |
|                                  |                     | TOTAL FUNDING  | EDN              |                           | 2,959 C |                     | 2,959 C |
| <b>EDN407 - PUBLIC LIBRARIES</b> |                     |  |                  |                           |         |                     |         |
| 100.                             | 01-H&S              | HEALTH AND SAFETY, STATEWIDE   |                  |                           |         |                     |         |
|                                  |                     | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR HEALTH, SAFETY, ACCESSIBILITY, AND OTHER CODE REQUIREMENTS. PROJECT MAY INCLUDE, BUT NOT BE LIMITED TO, THE REMOVAL OF HAZARDOUS MATERIALS, RENOVATIONS FOR LIBRARY PATRONS AND EMPLOYEES, ENVIRONMENTAL CONTROLS, FIRE PROTECTION, IMPROVEMENTS TO BUILDING AND GROUNDS, AND OTHER RELATED WORK.   |                  |                           |         |                     |         |
|                                  |                     | PLANS  |                  |                           | 200     |                     | 200     |
|                                  |                     | DESIGN   |                  |                           | 300     |                     | 300     |
|                                  |                     | CONSTRUCTION   |                  |                           | 1,450   |                     | 1,450   |
|                                  |                     | EQUIPMENT  |                  |                           | 50      |                     | 50      |
|                                  |                     | TOTAL FUNDING  | AGS              |                           | 2,000 C |                     | 2,000 C |
| 101.                             | 46B                 | MAKAWAO PUBLIC LIBRARY, MAUI   |                  |                           |         |                     |         |
|                                  |                     | LAND ACQUISITION FOR THE EXPANSION OF THE MAKAWAO PUBLIC LIBRARY AND PARKING AREA, MAUI.   |                  |                           |         |                     |         |
|                                  |                     | LAND   |                  |                           | 744     |                     |         |
|                                  |                     | TOTAL FUNDING  | AGS              |                           | 744 C   |                     | C       |

## CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |       |
|----------|---------------------|---|------------------|---------------------------|-------|---------------------|-------|
|          |                     |   |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F |
| 102.     | 03-PCS              | LUMP SUM CIP - PLANNING CONSULTANT, STATEWIDE   |                  |                           |       |                     |       |
|          |                     | PLANS FOR PROFESSIONAL AND TECHNICAL ASSISTANCE TO PROVIDE ASSISTANCE IN DEVELOPING PLANS FOR NEW AND/OR REPLACEMENT LIBRARIES INCLUDING, BUT NOT LIMITED TO THE AIEA, MANOA, KOHALA, AND NANAKULI AREAS. |                  |                           |       | 125                 |       |
|          |                     | PLANS   |                  |                           |       | 125                 |       |
|          |                     | TOTAL FUNDING   | AGS              |                           |       | 125                 | C     |
| 103.     |                     | HANAPEPE PUBLIC LIBRARY, KAUAI  |                  |                           |       |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE EXPANSION OF HANAPEPE PUBLIC LIBRARY.   |                  |                           |       |                     |       |
|          |                     | DESIGN  |                  |                           |       | 100                 |       |
|          |                     | CONSTRUCTION  |                  |                           |       | 1,350               |       |
|          |                     | EQUIPMENT   |                  |                           |       | 50                  |       |
|          |                     | TOTAL FUNDING   | AGS              |                           |       | 1,500               | C     |
| 104.     |                     | MILILANI PUBLIC LIBRARY, OAHU   |                  |                           |       |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR VARIOUS RENOVATIONS AND IMPROVEMENTS TO THE MILILANI PUBLIC LIBRARY.  |                  |                           |       |                     |       |
|          |                     | DESIGN  |                  |                           |       | 50                  |       |
|          |                     | CONSTRUCTION  |                  |                           |       | 400                 |       |
|          |                     | TOTAL FUNDING   | AGS              |                           |       | 450                 | C     |
| 105.     |                     | KOHALA PUBLIC LIBRARY, HAWAII   |                  |                           |       |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR A NEW LIBRARY FACILITY.   |                  |                           |       |                     |       |
|          |                     | DESIGN  |                  |                           |       | 476                 |       |
|          |                     | CONSTRUCTION  |                  |                           |       | 5,885               |       |
|          |                     | TOTAL FUNDING   | AGS              |                           |       | 6,361               | C     |
| 106.     |                     | MANOA PUBLIC LIBRARY, OAHU  |                  |                           |       |                     |       |
|          |                     | PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE EXPANSION OR REPLACEMENT OF THE LIBRARY.  |                  |                           |       |                     |       |
|          |                     | PLANS   |                  |                           |       | 100                 |       |
|          |                     | LAND  |                  |                           |       | 50                  |       |
|          |                     | DESIGN  |                  |                           |       | 550                 |       |
|          |                     | CONSTRUCTION  |                  |                           |       | 5,800               |       |
|          |                     | TOTAL FUNDING   | AGS              |                           |       | 6,500               | C     |
| 107.     |                     | LILIHA PUBLIC LIBRARY, OAHU   |                  |                           |       |                     |       |
|          |                     | DESIGN AND CONSTRUCTION FOR IMPROVEMENTS FOR THE LIBRARY TO INCLUDE REPLACEMENT OF FLOORING MATERIALS.  |                  |                           |       |                     |       |
|          |                     | DESIGN  |                  |                           |       | 10                  |       |
|          |                     | CONSTRUCTION  |                  |                           |       | 70                  |       |
|          |                     | TOTAL FUNDING   | AGS              |                           |       | 80                  | C     |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.                                    | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |        |                     |       |
|---|---------------------|--|------------------|---------------------------|--------|---------------------|-------|
|   |                     |  |                  | FISCAL YEAR 2005-06       | M O F  | FISCAL YEAR 2006-07 | M O F |
| <b>UOH100 - UNIVERSITY OF HAWAII, MANOA</b> |                     |  |                  |                           |        |                     |       |
| 108.  | 064                 | UHM, JOHN A. BURNS SCHOOL OF MEDICINE AND CANCER RESEARCH CENTER OF HAWAII, OAHU   |                  |                           |        |                     |       |
|   |                     | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE JOHN A. BURNS SCHOOL OF MEDICINE, CANCER RESEARCH CENTER OF HAWAII, AND RELATED PROJECTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |                  |                           |        |                     |       |
|   |                     | PLANS  |                  |                           | 1      |                     |       |
|   |                     | DESIGN   |                  |                           | 1      |                     |       |
|   |                     | CONSTRUCTION   |                  |                           | 8,998  |                     |       |
|   |                     | EQUIPMENT  |                  |                           | 3,000  |                     |       |
|   |                     | TOTAL FUNDING  | UOH              |                           | 12,000 | W                   | W     |
| 109.  |                     | UHM, HAWAII INSTITUTE OF MARINE BIOLOGY RESEARCH LAB AT COCONUT ISLAND, OAHU   |                  |                           |        |                     |       |
|   |                     | PLANS, DESIGN, AND CONSTRUCTION FOR A MODERN LAB/OFFICE COMPLEX FOR THE HAWAII INSTITUTE OF MARINE BIOLOGY AT COCONUT ISLAND.  |                  |                           |        |                     |       |
|   |                     | PLANS  |                  |                           | 500    |                     |       |
|   |                     | DESIGN   |                  |                           | 500    |                     |       |
|   |                     | CONSTRUCTION   |                  |                           | 30,000 |                     |       |
|   |                     | TOTAL FUNDING  | UOH              |                           | 31,000 | E                   | E     |
| 110.  |                     | UHM, PERFORMING ARTS FACILITY, OAHU  |                  |                           |        |                     |       |
|   |                     | DESIGN FOR A PERFORMING ARTS FACILITY AT THE UNIVERSITY OF HAWAII AT MANOA. PROJECT TO INCLUDE RELOCATION OF EXISTING PROGRAMS, INFRASTRUCTURE, PARKING, AND ALL RELATED PROJECT COSTS.  |                  |                           |        |                     |       |
|   |                     | DESIGN   |                  |                           | 2,000  |                     |       |
|   |                     | TOTAL FUNDING  | UOH              |                           | 2,000  | C                   | C     |
| 111.  |                     | UHM, FREAR HALL REDEVELOPMENT, OAHU  |                  |                           |        |                     |       |
|   |                     | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REDEVELOPMENT OF FREAR HALL DORMITORY. PROJECT TO INCLUDE DEMOLITION, GROUND AND SITE IMPROVEMENTS, INFRASTRUCTURE, EQUIPMENT AND APPURTENANCES, AND ALL RELATED PROJECT COSTS.       |                  |                           |        |                     |       |
|   |                     | PLANS  |                  |                           | 1      |                     |       |
|   |                     | DESIGN   |                  |                           | 4,500  |                     |       |
|   |                     | CONSTRUCTION   |                  |                           | 20,498 |                     |       |
|   |                     | EQUIPMENT  |                  |                           | 1      |                     |       |
|   |                     | TOTAL FUNDING  | UOH              |                           | 25,000 | C                   | C     |
| 112.  |                     | UHM, CASTLE MEMORIAL HALL RENOVATION AND IMPROVEMENTS, OAHU  |                  |                           |        |                     |       |
|   |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATION AND IMPROVEMENTS FOR CASTLE MEMORIAL HALL.  |                  |                           |        |                     |       |
|   |                     | DESIGN   |                  |                           | 75     |                     |       |
|   |                     | CONSTRUCTION   |                  |                           | 450    |                     |       |
|   |                     | EQUIPMENT  |                  |                           | 1      |                     |       |
|   |                     | TOTAL FUNDING  | UOH              |                           | 526    | C                   | C     |

## CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.   | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |       |
|--|---------------------|---|------------------|---------------------------|-------|---------------------|-------|
|  |                     |   |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F |
| 113.   |                     | UHM, WAIALUA AGRIBUSINESS INCUBATOR, OAHU   |                  |                           |       |                     |       |
|  |                     | PLANS FOR AN AGRIBUSINESS INCUBATOR IN WAIALUA, OAHU.   |                  |                           |       |                     |       |
|  |                     | PLANS   |                  |                           |       | 300                 |       |
|  |                     | TOTAL FUNDING   | UOH              |                           |       | 300C                | C     |
| <b>UOH210 - UNIVERSITY OF HAWAII, HILO</b>               |                     |   |                  |                           |       |                     |       |
| 114.   | 347                 | UHH, HAWAIIAN LANGUAGE BUILDING, HAWAII   |                  |                           |       |                     |       |
|  |                     | PLANS AND DESIGN FOR A HAWAIIAN LANGUAGE BUILDING AT THE UNIVERSITY OF HAWAII AT HILO. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, AND ALL RELATED PROJECT COSTS.                                    |                  |                           |       |                     |       |
|  |                     | PLANS   |                  |                           |       | 200                 |       |
|  |                     | DESIGN  |                  |                           |       | 1,800               |       |
|  |                     | TOTAL FUNDING   | UOH              |                           |       | 2,000C              | C     |
| 115.   |                     | UHH, SCIENCES AND TECHNOLOGY BUILDING, HAWAII   |                  |                           |       |                     |       |
|  |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE SCIENCES AND TECHNOLOGY BUILDING. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES, AND ALL RELATED PROJECT COSTS.                |                  |                           |       |                     |       |
|  |                     | DESIGN  |                  |                           |       | 1                   |       |
|  |                     | CONSTRUCTION  |                  |                           |       | 19,998              |       |
|  |                     | EQUIPMENT   |                  |                           |       | 1                   |       |
|  |                     | TOTAL FUNDING   | UOH              |                           |       | 20,000C             | C     |
| 116.   |                     | UHH, MAIN ENTRANCES TRAFFIC LIGHT IMPROVEMENTS, HAWAII  |                  |                           |       |                     |       |
|  |                     | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR UH HILO MAIN ENTRANCES TRAFFIC LIGHTS IMPROVEMENTS ON KAWILI STREET.   |                  |                           |       |                     |       |
|  |                     | PLANS   |                  |                           |       | 1                   |       |
|  |                     | DESIGN  |                  |                           |       | 49                  |       |
|  |                     | CONSTRUCTION  |                  |                           |       | 500                 |       |
|  |                     | EQUIPMENT   |                  |                           |       | 50                  |       |
|  |                     | TOTAL FUNDING   | UOH              |                           |       | 600C                | C     |
| <b>UOH700 - UNIVERSITY OF HAWAII, WEST OAHU</b>          |                     |   |                  |                           |       |                     |       |
| 117.   |                     | UHWO, TEMPORARY FACILITIES, OAHU  |                  |                           |       |                     |       |
|  |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TEMPORARY FACILITIES FOR THE UNIVERSITY OF HAWAII-WEST OAHU. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES, AND ALL PROJECT COSTS. |                  |                           |       |                     |       |
|  |                     | DESIGN  |                  |                           |       | 1                   |       |
|  |                     | CONSTRUCTION  |                  |                           |       | 498                 |       |
|  |                     | EQUIPMENT   |                  |                           |       | 1                   |       |
|  |                     | TOTAL FUNDING   | UOH              |                           |       | 500C                | C     |
| <b>UOH800 - UNIVERSITY OF HAWAII, COMMUNITY COLLEGES</b> |                     |   |                  |                           |       |                     |       |
| 118.   | B42                 | KAP, CANNON CLUB SITE DEVELOPMENT, OAHU   |                  |                           |       |                     |       |
|  |                     | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE DEVELOPMENT OF THE CANNON CLUB SITE  |                  |                           |       |                     |       |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |         |                     |       |
|----------|---------------------|---|------------------|---------------------------|---------|---------------------|-------|
|          |                     |   |                  | FISCAL YEAR 2005-06       | M O F   | FISCAL YEAR 2006-07 | M O F |
|          |                     | FOR THE CULINARY INSTITUTE OF THE PACIFIC. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.  |                  |                           |         |                     |       |
|          |                     | PLANS   |                  |                           | 2       |                     |       |
|          |                     | DESIGN  |                  |                           | 2       |                     |       |
|          |                     | CONSTRUCTION  |                  |                           | 17,000  |                     |       |
|          |                     | EQUIPMENT   |                  |                           | 2       |                     |       |
|          |                     | TOTAL FUNDING   | UOH              |                           | 3,003N  |                     | N     |
|          |                     |   | UOH              |                           | 14,003R |                     | R     |
| 119.     |                     | LEE, SOCIAL SCIENCES FACILITY, OAHU   |                  |                           |         |                     |       |
|          |                     | PLANS AND DESIGN FOR A NEW SOCIAL SCIENCES FACILITY AT LEEWARD COMMUNITY COLLEGE.   |                  |                           |         |                     |       |
|          |                     | PLANS   |                  |                           | 367     |                     |       |
|          |                     | DESIGN  |                  |                           | 944     |                     |       |
|          |                     | TOTAL FUNDING   | UOH              |                           | 1,311C  |                     | C     |
| 120.     |                     | HAW, KOMOHANA CAMPUS DEVELOPMENT, HAWAII  |                  |                           |         |                     |       |
|          |                     | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE DEVELOPMENT OF HAWAII COMMUNITY COLLEGE MAUKA OF KOMOHANA STREET. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES, AND ALL RELATED PROJECT COSTS. |                  |                           |         |                     |       |
|          |                     | PLANS   |                  |                           | 1,087   |                     |       |
|          |                     | DESIGN  |                  |                           | 5,863   |                     |       |
|          |                     | CONSTRUCTION  |                  |                           |         | 11,256              |       |
|          |                     | EQUIPMENT   |                  |                           |         | 1                   |       |
|          |                     | TOTAL FUNDING   | UOH              |                           | 6,950C  | 11,257C             |       |
| 121.     |                     | MAU, STUDENT SERVICES BUILDING RENOVATION, MAUI   |                  |                           |         |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF THE STUDENT SERVICES BUILDING. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES, AND ALL RELATED PROJECT COSTS.                             |                  |                           |         |                     |       |
|          |                     | DESIGN  |                  |                           | 300     |                     |       |
|          |                     | CONSTRUCTION  |                  |                           | 3,100   |                     |       |
|          |                     | EQUIPMENT   |                  |                           | 100     |                     |       |
|          |                     | TOTAL FUNDING   | UOH              |                           | 3,500C  |                     | C     |
| 122.     |                     | MAU, SCIENCE BUILDING, MAUI   |                  |                           |         |                     |       |
|          |                     | DESIGN FOR A NEW SCIENCE BUILDING AT MAUI COMMUNITY COLLEGE.  |                  |                           |         |                     |       |
|          |                     | DESIGN  |                  |                           | 3,448   |                     |       |
|          |                     | TOTAL FUNDING   | UOH              |                           | 3,448C  |                     | C     |
| 123.     |                     | KAU, ONE STOP CENTER BUILDING, KAUAI  |                  |                           |         |                     |       |
|          |                     | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE ONE STOP CENTER BUILDING AT KAUAI COMMUNITY COLLEGE. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES, AND ALL RELATED PROJECT COSTS.                     |                  |                           |         |                     |       |
|          |                     | DESIGN  |                  |                           | 1       |                     |       |
|          |                     | CONSTRUCTION  |                  |                           | 10,000  |                     |       |

**CAPITAL IMPROVEMENT PROJECTS**

| ITEM NO.  | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |       |
|---|---------------------|--|------------------|---------------------------|-------|---------------------|-------|
|   |                     |  |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F |
|   |                     | EQUIPMENT  |                  | 1,780                     |       |                     |       |
|   |                     | TOTAL FUNDING  | UOH              | 11,781                    | C     |                     |       |
| 124.  |                     | CCS, KEY PROJECT, OAHU   |                  |                           |       |                     |       |
|   |                     | DESIGN AND CONSTRUCTION FOR FACILITY IMPROVEMENTS FOR THE KUALOA-HEEIA ECUMENICAL YOUTH PROJECT. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.  |                  |                           |       |                     |       |
|   |                     | DESIGN   |                  | 25                        |       |                     |       |
|   |                     | CONSTRUCTION   |                  | 100                       |       |                     |       |
|   |                     | TOTAL FUNDING  | UOH              | 125                       | C     |                     |       |
| <b>UOH900 - UNIVERSITY OF HAWAII, SYSTEM WIDE SUPPORT</b> |                     |  |                  |                           |       |                     |       |
| 125.  |                     | SYS, CAPITAL RENEWAL AND DEFERRED MAINTENANCE, STATEWIDE   |                  |                           |       |                     |       |
|   |                     | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CAPITAL RENEWAL AND DEFERRED MAINTENANCE OF THE UNIVERSITY'S PHYSICAL PLANT. PROJECT TO INCLUDE REROOFING, MECHANICAL AND ELECTRICAL SYSTEMS, RENOVATIONS, RESURFACING, REPAINTING, AND OTHER REPAIRS AND PROJECT COSTS TO UPGRADE FACILITIES AT ALL UNIVERSITY CAMPUSES. |                  |                           |       |                     |       |
|   |                     | PLANS  |                  | 500                       |       | 500                 |       |
|   |                     | DESIGN   |                  | 2,500                     |       | 2,500               |       |
|   |                     | CONSTRUCTION   |                  | 31,999                    |       | 16,999              |       |
|   |                     | EQUIPMENT  |                  | 1                         |       | 1                   |       |
|   |                     | TOTAL FUNDING  | UOH              | 35,000                    | C     | 20,000              | C     |
| 126.  |                     | SYS, HEALTH, SAFETY, AND CODE REQUIREMENTS, STATEWIDE  |                  |                           |       |                     |       |
|   |                     | DESIGN AND CONSTRUCTION FOR MODIFICATIONS TO EXISTING FACILITIES AND/OR CONSTRUCTION OF NEW FACILITIES FOR HEALTH, SAFETY, AND CODE REQUIREMENTS.  |                  |                           |       |                     |       |
|   |                     | DESIGN   |                  | 1,244                     |       | 656                 |       |
|   |                     | CONSTRUCTION   |                  | 14,498                    |       | 6,875               |       |
|   |                     | TOTAL FUNDING  | UOH              | 15,742                    | C     | 7,531               | C     |
| <b>H. CULTURE AND RECREATION</b>                          |                     |  |                  |                           |       |                     |       |
| <b>AGS881 - PERFORMING AND VISUAL ARTS EVENTS</b>         |                     |  |                  |                           |       |                     |       |
| 1.  |                     | HUI NOEAU CENTER, LAND ACQUISITION, MAUI   |                  |                           |       |                     |       |
|   |                     | LAND ACQUISITION TO ACQUIRE LAND IN KALUANUI, MAUI TO PREVENT DISPLACEMENT OF HUI NOEAU VISUAL ARTS CENTER.  |                  |                           |       |                     |       |
|   |                     | LAND   |                  | 500                       |       |                     |       |
|   |                     | TOTAL FUNDING  | AGS              | 500                       | C     |                     | C     |
| 2.  |                     | FRIENDS OF WAIPAHU CULTURAL GARDEN PARK, OAHU  |                  |                           |       |                     |       |
|   |                     | CONSTRUCTION AND EQUIPMENT FOR HAWAII'S PLANTATION VILLAGE HISTORIC PRESERVATION PROJECT, TO INCLUDE EXPANSION AND IMPROVEMENT OF THE HAWAIIAN CULTURAL  |                  |                           |       |                     |       |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.   | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |       |
|--|---------------------|---|------------------|---------------------------|-------|---------------------|-------|
|  |                     |   |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F |
|  |                     | COMPLEX. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.   |                  |                           |       |                     |       |
|  |                     | CONSTRUCTION EQUIPMENT  |                  | 220                       |       |                     |       |
|  |                     |   |                  | 30                        |       |                     |       |
|  |                     | TOTAL FUNDING   | AGS              | 250C                      |       |                     | C     |
| <b>LNR806 - PARKS ADMINISTRATION AND OPERATION</b> |                     |   |                  |                           |       |                     |       |
| 3.   | H-46                | LUMP SUM CIP - STATE PARKS FACILITY IMPROVEMENTS, STATEWIDE   |                  |                           |       |                     |       |
|  |                     | PLANS, DESIGN, AND CONSTRUCTION FOR STATE PARKS IMPROVEMENTS, STATEWIDE, AND OTHER RELATED IMPROVEMENTS.  |                  |                           |       |                     |       |
|  |                     | PLANS   |                  | 250                       |       |                     |       |
|  |                     | DESIGN  |                  | 250                       |       | 250                 |       |
|  |                     | CONSTRUCTION  |                  | 2,500                     |       | 1,750               |       |
|  |                     | TOTAL FUNDING   | LNR              | 3,000C                    |       | 2,000C              |       |
| 4.   |                     | KOKEE STATE PARK, KAUAI   |                  |                           |       |                     |       |
|  |                     | DESIGN AND CONSTRUCTION FOR THE WIDENING OF KOKEE ROAD.   |                  |                           |       |                     |       |
|  |                     | DESIGN  |                  | 50                        |       |                     |       |
|  |                     | CONSTRUCTION  |                  | 550                       |       |                     |       |
|  |                     | TOTAL FUNDING   | LNR              | 600C                      |       |                     | C     |
| 5.   |                     | HAENA STATE PARK, KAUAI   |                  |                           |       |                     |       |
|  |                     | PLANS FOR A MASTER PLAN FOR THE DEVELOPMENT OF HAENA STATE PARK TO ENSURE THE PRESERVATION OF RESOURCES AND ENHANCE HISTORICAL AND CULTURAL FEATURES. |                  |                           |       |                     |       |
|  |                     | PLANS   |                  | 300                       |       |                     |       |
|  |                     | TOTAL FUNDING   | LNR              | 300C                      |       |                     | C     |
| 6.   |                     | DIAMOND HEAD VISITOR ORIENTATION CENTER, OAHU   |                  |                           |       |                     |       |
|  |                     | PLANS FOR THE DIAMOND HEAD VISITOR ORIENTATION CENTER.  |                  |                           |       |                     |       |
|  |                     | PLANS   |                  | 260                       |       |                     |       |
|  |                     | TOTAL FUNDING   | LNR              | 260C                      |       |                     | C     |
| 7.   |                     | LAWAI INTERNATIONAL CENTER, KAUAI   |                  |                           |       |                     |       |
|  |                     | DESIGN AND CONSTRUCTION FOR THE DEVELOPMENT OF THE LAWAI INTERNATIONAL CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.       |                  |                           |       |                     |       |
|  |                     | DESIGN  |                  | 100                       |       |                     |       |
|  |                     | CONSTRUCTION  |                  | 400                       |       |                     |       |
|  |                     | TOTAL FUNDING   | LNR              | 500C                      |       |                     | C     |
| 8.   |                     | DAUGHTERS OF HAWAII, HAWAII   |                  |                           |       |                     |       |
|  |                     | DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO HULIHEE PALACE IN KAILUA, KONA. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.          |                  |                           |       |                     |       |
|  |                     | DESIGN  |                  | 10                        |       |                     |       |
|  |                     | CONSTRUCTION  |                  | 40                        |       |                     |       |
|  |                     | TOTAL FUNDING   | LNR              | 50C                       |       |                     | C     |



## CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.                               | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |       |
|--|---------------------|---|------------------|---------------------------|-------|---------------------|-------|
|  |                     |   |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F |
| <b>LNR801 - OCEAN-BASED RECREATION</b> |                     |   |                  |                           |       |                     |       |
| 9.                                     | 299D                | LUMP SUM CIP - FERRY SYSTEM IMPROVEMENTS, STATEWIDE   |                  |                           |       |                     |       |
|  |                     | DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AT LAHAINA, MANELE, AND MAALAEA SMALL BOAT HARBORS TO SUPPORT EXISTING FERRY OPERATIONS, INCLUDING PIERS, LOADING DOCKS, DREDGING, PAVING, UTILITIES, COMFORT STATIONS, ADMINISTRATIVE OFFICES, COVERED WAITING AREAS, AND/OR OTHER BERTHING AND SHORE FACILITIES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |                  |                           |       |                     |       |
|  |                     | DESIGN  |                  |                           |       | 1,150               |       |
|  |                     | CONSTRUCTION  |                  |                           |       | 13,650              |       |
|  |                     | TOTAL FUNDING   | LNR              |                           |       | 3,280 C             | C     |
|  |                     |   | LNR              |                           |       | 11,520 N            | N     |
| 10.                                    | 299E                | LUMP SUM CIP - IMPROVEMENTS TO HARBOR FACILITIES, STATEWIDE   |                  |                           |       |                     |       |
|  |                     | PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS AT VARIOUS BOATING FACILITIES TO INCLUDE PIERS, LOADING DOCKS, UTILITIES, BOAT RAMPS, RESTROOMS, PAVING, DREDGING, ELIMINATION OF CESSPOOLS, AND OTHER RELATED WORK.   |                  |                           |       |                     |       |
|  |                     | PLANS   |                  |                           |       | 100                 |       |
|  |                     | DESIGN  |                  |                           |       | 500                 |       |
|  |                     | CONSTRUCTION  |                  |                           |       | 4,400               |       |
|  |                     | TOTAL FUNDING   | LNR              |                           |       | 5,000 D             | D     |
| 11.                                    |                     | KAWAIHAE HARBOR IMPROVEMENTS, HAWAII  |                  |                           |       |                     |       |
|  |                     | DESIGN AND CONSTRUCTION FOR SEWER SYSTEM AND UTILITIES IMPROVEMENTS, AND THE INSTALLATION OF A LOADING DOCK.  |                  |                           |       |                     |       |
|  |                     | DESIGN  |                  |                           |       | 600                 |       |
|  |                     | CONSTRUCTION  |                  |                           |       | 2,100               |       |
|  |                     | TOTAL FUNDING   | LNR              |                           |       | 2,700 C             | C     |
| 12.                                    |                     | KAHULUI SMALL BOAT HARBOR IMPROVEMENTS, MAUI  |                  |                           |       |                     |       |
|  |                     | DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE EXISTING RAMP FACILITY. IMPROVEMENTS TO INCLUDE THE CONSTRUCTION OF A NEW DOCK, AND OTHER RELATED IMPROVEMENTS.   |                  |                           |       |                     |       |
|  |                     | DESIGN  |                  |                           |       | 1                   |       |
|  |                     | CONSTRUCTION  |                  |                           |       | 999                 |       |
|  |                     | TOTAL FUNDING   | LNR              |                           |       | 1,000 C             | C     |
| 13.                                    |                     | WAIANAE BOAT HARBOR, OAHU   |                  |                           |       |                     |       |
|  |                     | DESIGN AND CONSTRUCTION TO IMPROVE OR REPLACE EXISTING FACILITIES.  |                  |                           |       |                     |       |
|  |                     | DESIGN  |                  |                           |       | 150                 |       |
|  |                     | CONSTRUCTION  |                  |                           |       | 600                 |       |
|  |                     | TOTAL FUNDING   | LNR              |                           |       | 750 C               | C     |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.   | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |        |                     |       |
|--|---------------------|--|------------------|---------------------------|--------|---------------------|-------|
|  |                     |  |                  | FISCAL YEAR 2005-06       | M O F  | FISCAL YEAR 2006-07 | M O F |
| 14.  |                     | KEEHI BOAT HARBOR, OAHU  |                  |                           |        |                     |       |
|  |                     | DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF DOCKS AND RELATED WORK.   |                  |                           |        |                     |       |
|  |                     | DESIGN   |                  |                           | 300    |                     |       |
|  |                     | CONSTRUCTION   |                  |                           | 1,500  |                     |       |
|  |                     | TOTAL FUNDING  | LNR              |                           | 1,800C |                     | C     |
| <b>AGS889 - SPECTATOR EVENTS AND SHOWS - ALOHA STADIUM</b> |                     |  |                  |                           |        |                     |       |
| 15.  | SA2005001           | ALOHA STADIUM, REPAIR AND IMPROVE ADMINISTRATIVE OFFICES, OAHU   |                  |                           |        |                     |       |
|  |                     | DESIGN AND CONSTRUCTION TO REPLACE CEILING TILE SYSTEM; REPLACE FLOOR CARPETING; REPLACE ELECTRICAL RECEPTACLES AND FIXTURES; REPLACE DRAPERY; REPLACE WALL COVERING; TEXTURE AND/OR PAINT WALL SURFACES; SEAL LEAKS IN CEILING CRAWL SPACES; REPLACE DETERIORATED PLUMBING; AND PERFORM OTHER MISCELLANEOUS WORK. |                  |                           |        |                     |       |
|  |                     | DESIGN   |                  |                           | 50     |                     | 25    |
|  |                     | CONSTRUCTION   |                  |                           | 375    |                     | 50    |
|  |                     | TOTAL FUNDING  | AGS              |                           | 425B   |                     | 75B   |
| 16.  | SA2005003           | ALOHA STADIUM, REPLACE SEATS AT MAUKA MOVABLE STANDS ORANGE LEVEL, OAHU  |                  |                           |        |                     |       |
|  |                     | DESIGN AND CONSTRUCTION TO REPLACE SEATS AND MOUNTING HARDWARE AT VARIOUS SECTIONS OF THE ORANGE LEVEL OF THE MAUKA MOVABLE STANDS; PAINT, REPAIR, AND PERFORM OTHER MISCELLANEOUS WORK AT THE ORANGE SEATING LEVEL OF THE MAUKA MOVABLE STANDS.   |                  |                           |        |                     |       |
|  |                     | DESIGN   |                  |                           | 60     |                     | 15    |
|  |                     | CONSTRUCTION   |                  |                           | 1,125  |                     | 50    |
|  |                     | TOTAL FUNDING  | AGS              |                           | 1,185C |                     | 65C   |
| <b>I. PUBLIC SAFETY</b>                                    |                     |  |                  |                           |        |                     |       |
| <b>PSD402 - HALAWA CORRECTIONAL FACILITY</b>               |                     |  |                  |                           |        |                     |       |
| 1.   | 20021               | HALAWA CORRECTIONAL FACILITY, LIFE SAFETY CODE IMPROVEMENTS AND REPLACEMENT OF MEDIUM-SECURITY FACILITY ROOFING SYSTEM, OAHU   |                  |                           |        |                     |       |
|  |                     | PLANS, DESIGN, AND CONSTRUCTION FOR FIRE AND LIFE SAFETY CODE IMPROVEMENTS AND REPLACEMENT OF THE EXISTING ROOFING SYSTEM.   |                  |                           |        |                     |       |
|  |                     | PLANS  |                  |                           | 35     |                     |       |
|  |                     | DESIGN   |                  |                           | 232    |                     |       |
|  |                     | CONSTRUCTION   |                  |                           | 615    |                     |       |
|  |                     | TOTAL FUNDING  | AGS              |                           | 882C   |                     | C     |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.   | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |        |                     |        |
|--|---------------------|---|------------------|---------------------------|--------|---------------------|--------|
|  |                     |   |                  | FISCAL YEAR 2005-06       | M O F  | FISCAL YEAR 2006-07 | M O F  |
| <b>PSD900 - GENERAL ADMINISTRATION</b>             |                     |   |                  |                           |        |                     |        |
| 2.   | 20050               | LUMP SUM CIP - REPAIRS, ALTERATIONS, AND IMPROVEMENTS FOR CORRECTIONAL FACILITIES, STATEWIDE  |                  |                           |        |                     |        |
|  |                     | DESIGN AND CONSTRUCTION FOR REPAIRS, ALTERATIONS, AND IMPROVEMENTS FOR CORRECTIONAL FACILITIES, STATEWIDE.  |                  |                           |        |                     |        |
|  |                     | DESIGN  |                  |                           | 400    |                     |        |
|  |                     | CONSTRUCTION  |                  |                           | 1,600  |                     |        |
|  |                     | TOTAL FUNDING   | AGS              |                           | 2,000C |                     | C      |
| <b>DEF110 - AMELIORATION OF PHYSICAL DISASTERS</b> |                     |   |                  |                           |        |                     |        |
| 3.   | C13                 | DISASTER WARNING AND COMMUNICATION DEVICES, STATEWIDE   |                  |                           |        |                     |        |
|  |                     | PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INCREMENTAL ADDITION, REPLACEMENT, AND UPGRADE OF STATE CIVIL DEFENSE WARNING AND COMMUNICATIONS EQUIPMENT, STATEWIDE. THIS WILL EXPAND THE COVERAGE AND RELIABILITY OF THE WARNING AND CONTROL SYSTEM, AS WELL AS MODERNIZE AND ALLEVIATE SIREN COVERAGE GAP AREAS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |                  |                           |        |                     |        |
|  |                     | PLANS   |                  |                           | 1      |                     | 1      |
|  |                     | LAND  |                  |                           | 1      |                     | 1      |
|  |                     | DESIGN  |                  |                           | 94     |                     | 94     |
|  |                     | CONSTRUCTION  |                  |                           | 1,093  |                     | 1,093  |
|  |                     | EQUIPMENT   |                  |                           | 195    |                     | 195    |
|  |                     | TOTAL FUNDING   | AGS              |                           | 1,284C |                     | 1,284C |
|  |                     |   | AGS              |                           | 100N   |                     | 100N   |
| 4.   | C35                 | AMERICANS WITH DISABILITIES ACT (ADA) AND INFRASTRUCTURE IMPROVEMENTS, STATEWIDE  |                  |                           |        |                     |        |
|  |                     | DESIGN FOR MODIFICATIONS FOR PERSONS WITH DISABILITIES AND TO IDENTIFY AND CORRECT EXISTING DEFICIENCIES FOR DEPARTMENT OF DEFENSE (DOD) FACILITIES. THIS PROJECT IS NECESSARY TO MEET REQUIREMENTS IN ACCORDANCE WITH STATE AND FEDERAL LAWS. CURRENT BUILDING ACCESSIBILITY DOES NOT MEET ADA CRITERIA FOR ACCESSIBILITY.   |                  |                           |        |                     |        |
|  |                     | DESIGN  |                  |                           | 355    |                     |        |
|  |                     | TOTAL FUNDING   | AGS              |                           | 355C   |                     | C      |
| 5.   | A0201               | BIRKHIMER TUNNEL AND SUPPORT FACILITIES, HEALTH AND SAFETY REQUIREMENTS, OAHU   |                  |                           |        |                     |        |
|  |                     | PLANS, LAND ACQUISITION, AND DESIGN FOR IMPROVEMENTS TO THE STATE EMERGENCY OPERATING CENTER, BIRKHIMER TUNNEL AND SUPPORT FACILITIES TO INCLUDE ADA COMPLIANCE, SPRINKLER SYSTEM, ADDITIONAL INSTALLATION OF CONDUITS, REMOVAL OF OVERHEAD UTILITY LINES, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED   |                  |                           |        |                     |        |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.  | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |         |
|---|---------------------|--|------------------|---------------------------|-------|---------------------|---------|
|   |                     |  |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F   |
|   |                     | NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.   |                  |                           |       |                     |         |
|   |                     | PLANS  |                  |                           |       |                     | 1       |
|   |                     | LAND   |                  |                           |       |                     | 1       |
|   |                     | DESIGN   |                  |                           |       |                     | 117     |
|   |                     | TOTAL FUNDING  | AGS              |                           | C     |                     | 119C    |
| 6.  |                     | KEAUKAHA JOINT MILITARY CENTER, HAWAII   |                  |                           |       |                     |         |
|   |                     | PLANS AND DESIGN FOR A SPECIALLY DESIGNED COMPLEX FOR SOLDIERS, AIRMEN, VETERANS, AND RETIREES IN THE ISLAND OF HAWAII. THIS PROJECT WILL ALSO PROVIDE AN EXPANDED PX, LIMITED COMMISSARY AND OFFICE FOR VETERANS AFFAIRS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |                  |                           |       |                     |         |
|   |                     | PLANS  |                  |                           |       | 100                 |         |
|   |                     | DESIGN   |                  |                           |       |                     | 4,300   |
|   |                     | TOTAL FUNDING  | DEF              |                           | 100C  |                     | 300C    |
|   |                     |  | DEF              |                           | N     |                     | 4,000N  |
| <b>K. GOVERNMENT-WIDE SUPPORT</b>                                 |                     |  |                  |                           |       |                     |         |
| <b>GOV100 - OFFICE OF THE GOVERNOR</b>                            |                     |  |                  |                           |       |                     |         |
| 1.  | G01                 | PROJECT ADJUSTMENT FUND, STATEWIDE   |                  |                           |       |                     |         |
|   |                     | PLANS FOR THE ESTABLISHMENT OF A CONTINGENCY FUND FOR PROJECT ADJUSTMENT PURPOSES SUBJECT TO THE PROVISIONS OF THE APPROPRIATIONS ACT.   |                  |                           |       |                     |         |
|   |                     | PLANS  |                  |                           |       | 1                   | 1       |
|   |                     | TOTAL FUNDING  | GOV              |                           | 1C    |                     | 1C      |
| <b>BUF101 - DEPARTMENTAL ADMINISTRATION &amp; BUDGET DIVISION</b> |                     |  |                  |                           |       |                     |         |
| 2.  | 00-01               | HAWAIIAN HOME LANDS TRUST FUND, STATEWIDE  |                  |                           |       |                     |         |
|   |                     | CONSTRUCTION TO AUTHORIZE THE TRANSFER OF GENERAL OBLIGATION BOND FUNDS TO THE HAWAIIAN HOME LANDS TRUST FUND TO SATISFY THE PROVISIONS OF ACT 14, SPSLH 1995.   |                  |                           |       |                     |         |
|   |                     | CONSTRUCTION   |                  |                           |       | 30,000              | 30,000  |
|   |                     | TOTAL FUNDING  | BUF              |                           |       | 30,000C             | 30,000C |
| 3.  | 00-02               | STATE EDUCATIONAL FACILITIES IMPROVEMENT SPECIAL FUND, STATEWIDE   |                  |                           |       |                     |         |
|   |                     | CONSTRUCTION TO AUTHORIZE THE TRANSFER OF GENERAL OBLIGATION BOND FUNDS TO THE STATE EDUCATIONAL FACILITIES IMPROVEMENT SPECIAL FUND.  |                  |                           |       |                     |         |
|   |                     | CONSTRUCTION   |                  |                           |       | 212,114             | 62,400  |
|   |                     | TOTAL FUNDING  | BUF              |                           |       | 212,114C            | 62,400C |
| 4.  |                     | BISHOP MUSEUM, OAHU  |                  |                           |       |                     |         |
|   |                     | PLANS, DESIGN, AND CONSTRUCTION FOR BISHOP MUSEUM'S EDUCATION CENTER - MAGNET SCHOOL   |                  |                           |       |                     |         |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.  | CAPITAL PROJECT NO. | TITLE   | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |       |
|---|---------------------|---|------------------|---------------------------|-------|---------------------|-------|
|   |                     |   |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F |
|   |                     | OF ENVIRONMENTAL AND CULTURAL STUDIES.<br>THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.  |                  |                           |       |                     |       |
|   |                     | PLANS   |                  | 100                       |       |                     |       |
|   |                     | DESIGN  |                  | 570                       |       |                     |       |
|   |                     | CONSTRUCTION  |                  | 530                       |       |                     |       |
|   |                     | TOTAL FUNDING   | AGS              | 1,200                     | C     |                     |       |
| <b>AGS131 - INFORMATION PROCESSING SERVICES</b> |                     |   |                  |                           |       |                     |       |
| 5.  | ICSD09              | COMMUNICATIONS INFRASTRUCTURE ESSENTIALS, STATEWIDE   |                  |                           |       |                     |       |
|   |                     | PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR STATEWIDE UPGRADES NECESSARY TO KEEP COMMUNICATIONS SYSTEMS WORKING EVERYDAY AND DURING NATURAL DISASTERS; IN LIHUE AND HILO, REPLACEMENT OF FAILING MICROWAVE LINKS; REPLACEMENT OF JOINT-USE TOWER AT HALEAKALA.   |                  |                           |       |                     |       |
|   |                     | PLANS   |                  | 1                         |       |                     |       |
|   |                     | LAND  |                  | 1                         |       |                     |       |
|   |                     | DESIGN  |                  | 197                       |       |                     |       |
|   |                     | CONSTRUCTION  |                  | 800                       |       |                     |       |
|   |                     | EQUIPMENT   |                  | 1                         |       |                     |       |
|   |                     | TOTAL FUNDING   | AGS              | 1,000                     | C     |                     |       |
| <b>LNR101 - PUBLIC LANDS MANAGEMENT</b>         |                     |   |                  |                           |       |                     |       |
| 6.  |                     | HONU'APO ESTUARY, LAND ACQUISITION IN KAU, HAWAII   |                  |                           |       |                     |       |
|   |                     | LAND ACQUISITION FOR THE PURCHASE OF LAND IN KAU, HAWAII FOR THE PROTECTION OF NATURAL RESOURCES.   |                  |                           |       |                     |       |
|   |                     | LAND  |                  | 1,000                     |       |                     |       |
|   |                     | TOTAL FUNDING   | LNR              | 1,000                     | C     |                     |       |
| 7.  |                     | MOANALUA VALLEY, LAND ACQUISITION, OAHU   |                  |                           |       |                     |       |
|   |                     | LAND ACQUISITION FOR THE PURCHASE OF LAND IN MOANALUA VALLEY FOR THE PROTECTION OF NATURAL RESOURCES.   |                  |                           |       |                     |       |
|   |                     | LAND  |                  | 3,000                     |       |                     |       |
|   |                     | TOTAL FUNDING   | LNR              | 3,000                     | C     |                     |       |
| <b>AGS221 - CONSTRUCTION</b>                    |                     |   |                  |                           |       |                     |       |
| 8.  | E109                | CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE   |                  |                           |       |                     |       |
|   |                     | PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR COSTS RELATING TO WAGES AND FRINGES FOR PERMANENT, PROJECT-FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES (DAGS). PROJECTS MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS. |                  |                           |       |                     |       |
|   |                     | PLANS   |                  | 5,537                     |       | 6,168               |       |
|   |                     | LAND  |                  | 1                         |       | 1                   |       |
|   |                     | DESIGN  |                  | 1                         |       | 1                   |       |
|   |                     | CONSTRUCTION  |                  | 1                         |       | 1                   |       |
|   |                     | EQUIPMENT   |                  | 1                         |       | 1                   |       |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |       |                     |       |
|----------|---------------------|--|------------------|---------------------------|-------|---------------------|-------|
|          |                     |  |                  | FISCAL YEAR 2005-06       | M O F | FISCAL YEAR 2006-07 | M O F |
|          |                     | TOTAL FUNDING  | AGS              | 5,541                     | C     | 6,172               | C     |
| 9.       | L102                | KAMAMALU BUILDING, ASBESTOS REMOVAL AND BUILDING RENOVATION, OAHU  |                  |                           |       |                     |       |
|          |                     | CONSTRUCTION FOR ASBESTOS MITIGATION AND INTERIOR RENOVATION FOR THE APPROXIMATELY 75,000 GROSS SQUARE FOOT KAMAMALU BUILDING.   |                  |                           |       |                     |       |
|          |                     | CONSTRUCTION   |                  | 12,600                    |       |                     |       |
|          |                     | TOTAL FUNDING  | AGS              | 12,600                    |       |                     | C     |
| 10.      | M106                | WASHINGTON PLACE AND QUEEN'S GALLERY RENOVATION, OAHU  |                  |                           |       |                     |       |
|          |                     | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT TO RENOVATE WASHINGTON PLACE. PROJECT ALSO INCLUDES RENOVATION AND RESTORATION WORK OF THE QUEEN'S GALLERY AND OTHER AREAS AT THE WASHINGTON PLACE SITE.                                    |                  |                           |       |                     |       |
|          |                     | PLANS  |                  | 50                        |       |                     |       |
|          |                     | DESIGN   |                  | 350                       |       |                     |       |
|          |                     | CONSTRUCTION   |                  |                           |       | 2,960               |       |
|          |                     | EQUIPMENT  |                  |                           |       | 40                  |       |
|          |                     | TOTAL FUNDING  | AGS              | 400                       | R     | 3,000               | R     |
| 11.      | DEF07               | RETROFIT PUBLIC BUILDINGS WITH HURRICANE PROTECTIVE MEASURES, STATEWIDE  |                  |                           |       |                     |       |
|          |                     | PLANS, DESIGN, AND CONSTRUCTION TO RETROFIT PUBLIC BUILDINGS WITH HURRICANE PROTECTIVE MEASURES TO INCREASE THE NUMBER OF PUBLIC SHELTERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. |                  |                           |       |                     |       |
|          |                     | PLANS  |                  | 1                         |       |                     |       |
|          |                     | DESIGN   |                  | 399                       |       |                     |       |
|          |                     | CONSTRUCTION   |                  | 1,600                     |       |                     |       |
|          |                     | TOTAL FUNDING  | AGS              | 2,000                     | C     |                     | C     |
| 12.      |                     | LEAHI HOSPITAL, ATHERTON BUILDING ROOF REPLACEMENT, OAHU   |                  |                           |       |                     |       |
|          |                     | PLANS, DESIGN, AND CONSTRUCTION TO REPLACE THE ROOF OF THE ATHERTON BUILDING AT LEAHI HOSPITAL.  |                  |                           |       |                     |       |
|          |                     | PLANS  |                  | 1                         |       |                     |       |
|          |                     | DESIGN   |                  | 1                         |       |                     |       |
|          |                     | CONSTRUCTION   |                  | 333                       |       |                     |       |
|          |                     | TOTAL FUNDING  | AGS              | 335                       | C     |                     | C     |
| 13.      |                     | LEAHI HOSPITAL, SINCLAIR BUILDING ROOF REPLACEMENT, OAHU   |                  |                           |       |                     |       |
|          |                     | PLANS, DESIGN, AND CONSTRUCTION TO REPLACE THE ROOF OF THE SINCLAIR BUILDING AT LEAHI HOSPITAL.  |                  |                           |       |                     |       |
|          |                     | PLANS  |                  | 1                         |       |                     |       |
|          |                     | DESIGN   |                  | 1                         |       |                     |       |
|          |                     | CONSTRUCTION   |                  | 668                       |       |                     |       |
|          |                     | TOTAL FUNDING  | AGS              | 670                       | C     |                     | C     |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO.                                    | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |        |                     |       |
|---|---------------------|--|------------------|---------------------------|--------|---------------------|-------|
|   |                     |  |                  | FISCAL YEAR 2005-06       | M O F  | FISCAL YEAR 2006-07 | M O F |
| 14.   |                     | LEAHI HOSPITAL, REPLACEMENT OF YOUNG BUILDING ELEVATORS, OAHU  |                  |                           |        |                     |       |
|   |                     | PLANS, DESIGN, AND CONSTRUCTION FOR THE REPLACEMENT OF THE YOUNG BUILDING ELEVATORS AT LEAHI HOSPITAL.   |                  |                           |        |                     |       |
|   |                     | PLANS  |                  |                           | 1      |                     |       |
|   |                     | DESIGN   |                  |                           | 1      |                     |       |
|   |                     | CONSTRUCTION   |                  |                           | 418    |                     |       |
|   |                     | TOTAL FUNDING  | AGS              |                           | 420C   |                     | C     |
| 15.   | 0101                | LUMP SUM CIP - PUBLIC BUILDING IMPROVEMENTS, STATEWIDE   |                  |                           |        |                     |       |
|   |                     | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS TO PUBLIC BUILDINGS AND SITES, STATEWIDE. WORK MAY INCLUDE MAJOR BUILDING SYSTEMS REPAIR AND REPLACEMENT, MITIGATION OF HEALTH AND SAFETY HAZARDS, REMODELING AND REPAIR OF OCCUPIED SPACES, AS WELL AS PLANNING STUDIES NECESSARY FOR MANAGEMENT OF PUBLIC FACILITIES AND OPERATIONS. |                  |                           |        |                     |       |
|   |                     | PLANS  |                  |                           | 250    |                     |       |
|   |                     | DESIGN   |                  |                           | 125    |                     |       |
|   |                     | CONSTRUCTION   |                  |                           | 870    |                     |       |
|   |                     | EQUIPMENT  |                  |                           | 5      |                     |       |
|   |                     | TOTAL FUNDING  | AGS              |                           | 1,250C |                     | C     |
| <b>SUB201 - CITY AND COUNTY OF HONOLULU</b> |                     |  |                  |                           |        |                     |       |
| 16.   |                     | NIU VALLEY GYMNASIUM, OAHU   |                  |                           |        |                     |       |
|   |                     | PLANS AND DESIGN FOR A NEW GYMNASIUM IN NIU VALLEY.  |                  |                           |        |                     |       |
|   |                     | PLANS  |                  |                           | 100    |                     |       |
|   |                     | DESIGN   |                  |                           | 100    |                     |       |
|   |                     | TOTAL FUNDING  | CCH              |                           | 200C   |                     | C     |
| 17.   |                     | MAUNALAHA HEIGHTS SUBDIVISION IMPROVEMENTS, OAHU   |                  |                           |        |                     |       |
|   |                     | DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE MAUNALAHA HEIGHTS SUBDIVISION, INCLUDING A NEW WATER LINE AND OTHER RELATED WORK.  |                  |                           |        |                     |       |
|   |                     | DESIGN   |                  |                           | 50     |                     |       |
|   |                     | CONSTRUCTION   |                  |                           | 750    |                     |       |
|   |                     | TOTAL FUNDING  | CCH              |                           | 800C   |                     | C     |
| 18.   |                     | WAHIWA DISTRICT PARK, OAHU   |                  |                           |        |                     |       |
|   |                     | DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE BASEBALL FIELD, INCLUDING A NEW SCOREBOARD AND PUBLIC ADDRESS SYSTEM, AND OTHER RELATED WORK.  |                  |                           |        |                     |       |
|   |                     | DESIGN   |                  |                           | 10     |                     |       |
|   |                     | CONSTRUCTION   |                  |                           | 40     |                     |       |
|   |                     | TOTAL FUNDING  | CCH              |                           | 50C    |                     | C     |
| 19.   |                     | SALT LAKE WATERWAYS, OAHU  |                  |                           |        |                     |       |
|   |                     | DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO SALT LAKE WATERWAYS, TO INCLUDE CLEANING AND OTHER RELATED WORK.   |                  |                           |        |                     |       |

**CAPITAL IMPROVEMENT PROJECTS**

| ITEM NO.                         | CAPITAL PROJECT NO. | TITLE  | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) |        |                     |       |
|----------------------------------|---------------------|--|------------------|---------------------------|--------|---------------------|-------|
|                                  |                     |  |                  | FISCAL YEAR 2005-06       | M O F  | FISCAL YEAR 2006-07 | M O F |
|                                  |                     | DESIGN   |                  |                           | 70     |                     |       |
|                                  |                     | CONSTRUCTION   |                  |                           | 330    |                     |       |
|                                  |                     | TOTAL FUNDING  | CCH              |                           | 400C   |                     | C     |
| 20.                              |                     | MAKAKILO DRIVE EXTENSION, OAHU   |                  |                           |        |                     |       |
|                                  |                     | PLANS TO CREATE A SECOND ACCESS FOR MAKAKILO BY EXTENDING MAKAKILO DRIVE TO THE H-1 FREEWAY.                 |                  |                           |        |                     |       |
|                                  |                     | PLANS  |                  |                           | 500    |                     |       |
|                                  |                     | TOTAL FUNDING  | CCH              |                           | 500C   |                     | C     |
| <b>SUB301 - COUNTY OF HAWAII</b> |                     |  |                  |                           |        |                     |       |
| 21.                              |                     | HAWAIIAN OCEAN VIEW ESTATES EXPLORATORY AND PRODUCTION WELLS, HAWAII   |                  |                           |        |                     |       |
|                                  |                     | PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR EXPLORATORY AND PRODUCTION WATER WELLS IN KAU, HAWAII. |                  |                           |        |                     |       |
|                                  |                     | PLANS  |                  |                           | 1      |                     |       |
|                                  |                     | LAND   |                  |                           | 1      |                     |       |
|                                  |                     | DESIGN   |                  |                           | 550    |                     |       |
|                                  |                     | CONSTRUCTION   |                  |                           | 5,448  |                     |       |
|                                  |                     | TOTAL FUNDING  | COH              |                           | 6,000C |                     | C     |
| <b>SUB501 - COUNTY OF KAUAI</b>  |                     |  |                  |                           |        |                     |       |
| 22.                              |                     | KAUAI EMERGENCY HOMELESS AND TRANSITIONAL SHELTERS, KAUAI  |                  |                           |        |                     |       |
|                                  |                     | DESIGN AND CONSTRUCTION FOR FACILITIES THAT ADDRESS EMERGENCY SHELTER AND TRANSITIONAL HOUSING UNIT NEEDS.   |                  |                           |        |                     |       |
|                                  |                     | DESIGN   |                  |                           | 50     |                     |       |
|                                  |                     | CONSTRUCTION   |                  |                           | 600    |                     |       |
|                                  |                     | TOTAL FUNDING  | COK              |                           | 650C   |                     | C     |
| 23.                              |                     | KALEPA VILLAGE RENTAL APARTMENTS, KAUAI  |                  |                           |        |                     |       |
|                                  |                     | DESIGN AND CONSTRUCTION FOR THE DEVELOPMENT OF UNITS TO PROVIDE HOUSING OPPORTUNITIES.                       |                  |                           |        |                     |       |
|                                  |                     | DESIGN   |                  |                           | 50     |                     |       |
|                                  |                     | CONSTRUCTION   |                  |                           | 950    |                     |       |
|                                  |                     | TOTAL FUNDING  | COK              |                           | 1,000C |                     | C     |

**PART V. CAPITAL IMPROVEMENT PROGRAM PROVISIONS**

SECTION 86. Provided that of the general obligation bond fund appropriation for Hawaii community development authority (BED 150), the sum of \$1,603,000 for fiscal year 2005-2006 and the sum of \$1,603,000 for fiscal year 2006-2007 shall be used for Hawaii community development authority capital improvements program staff costs, statewide.

SECTION 87. Provided that of the special funds appropriation for airports administration (TRN 195), the sum of \$2,151,000 for fiscal year 2005-2006 and the



sum of \$2,151,000 for fiscal year 2006-2007 shall be used for airports division capital improvements program staff costs, statewide.

SECTION 88. Provided that of the special funds appropriation for harbors administration (TRN 395), the sum of \$988,000 for fiscal year 2005-2006 and the sum of \$988,000 for fiscal year 2006-2007 shall be used for harbors division capital improvements program staff costs, statewide.

SECTION 89. Provided that of the special funds and other federal funds appropriations for highways administration (TRN 595), the sum of \$24,000,000 for fiscal year 2005-2006 and the sum of \$24,000,000 for fiscal year 2006-2007 shall be used for highways division capital improvements program staff costs, statewide.

SECTION 90. Provided that of the general obligation bond fund appropriation for land and natural resources – natural physical environment (LNR 906), the sum of \$2,175,000 for fiscal year 2005-2006 and the sum of \$2,175,000 for fiscal year 2006-2007 shall be used for department of land and natural resources capital improvements program staff costs, statewide.

SECTION 91. Provided that of the general obligation bond fund appropriation for health resources administration (HTH 595), the sum of \$1,600,000 for fiscal biennium 2005-2007 shall be used for design and construction purposes to expand and improve Molokai general hospital; and provided further that no funds shall be expended unless matched on a 1:2 (OHA/State) basis with funds from the office of Hawaiian affairs.

SECTION 92. Provided that of the special funds appropriation for school-based budgeting (EDN 100), the sum of \$400,000 for fiscal year 2005-2006 and the sum of \$400,000 for fiscal year 2006-2007 shall be used for department of education capital improvements program staff costs, statewide.

SECTION 93. Provided that of the general obligation bond fund appropriation for school support (EDN 400), the sum of \$2,959,000 for fiscal year 2005-2006 and the sum of \$2,959,000 for fiscal year 2006-2007 shall be used for department of education capital improvements program staff costs, statewide.

SECTION 94. Provided that of the general obligation bond fund appropriation for construction (AGS 221), the sum of \$5,541,000 for fiscal year 2005-2006 and the sum of \$6,172,000 for fiscal year 2006-2007 shall be used for department of accounting and general services capital improvements program staff costs, statewide.

SECTION 95. Provided that of the general obligation bond fund appropriation for construction (AGS 221), the sum of \$2,000,000 for fiscal biennium 2005-2007 shall be used to retrofit public buildings with hurricane protective measures; and provided further that all improvements shall conform to design criteria set forth by the department of defense for hurricane protection.

SECTION 96. Provided that of the general obligation bond fund appropriation for city and county of Honolulu (SUB 201), the sum of \$400,000 for fiscal biennium 2005-2007 shall be used for design and construction to improve and clean Salt Lake waterways; and provided further that no funds shall be expended unless matched on a 1:1 basis with funds from county contributions.

**ACT 178**

SECTION 97. Act 200, Session Laws of Hawaii 2003, section 77, as amended by Act 41, Session Laws of Hawaii 2004, section 5, is amended:

(1) By amending Item G-24.02 to read:

“ HONOKAA HIGH AND INTERMEDIATE SCHOOL, HAWAII

DESIGN AND CONSTRUCTION FOR NEW BATHROOM FACILITIES ~~(BETWEEN BUILDINGS C AND A)~~; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.

|               |     |  |   |       |
|---------------|-----|--|---|-------|
| DESIGN        |     |  |   | 35    |
| CONSTRUCTION  |     |  |   | 300   |
| TOTAL FUNDING | AGS |  | B | 335B” |

(2) By amending Item G-36 to read:

“P30035 LEILEHUA HIGH SCHOOL, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE CONVERSION OF ROOMS ~~(IN-BUILDING H)~~ INTO A TECHNOLOGY CENTER; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.

|               |     |  |      |    |
|---------------|-----|--|------|----|
| DESIGN        |     |  | 25   |    |
| CONSTRUCTION  |     |  | 225  |    |
| EQUIPMENT     |     |  | 1    |    |
| TOTAL FUNDING | AGS |  | 251B | B” |

(3) By amending Item G-54 to read:

“272051 WAIANAE HIGH SCHOOL, OAHU

~~DESIGN CONSTRUCTION AND EQUIPMENT FOR [AN EIGHT CLASSROOM BUILDING]NEW CLASSROOMS, FOOD LAB, AND SUPPORT ROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.~~

|                         |     |  |                  |    |
|-------------------------|-----|--|------------------|----|
| <del>DESIGN</del>       |     |  | <del>1</del>     |    |
| <del>CONSTRUCTION</del> |     |  | <del>4,800</del> |    |
| <del>CONSTRUCTION</del> |     |  | <del>4,799</del> |    |
| <del>EQUIPMENT</del>    |     |  | <del>100</del>   |    |
| TOTAL FUNDING           | AGS |  | 4,900B           | B” |

(4) By amending Item G-66.01 to read:

“ UHM, KOMOHANA AGRICULTURAL COMPLEX, HAWAII

DESIGN, CONSTRUCTION, AND EQUIPMENT TO RENOVATE EXISTING SPACE AND ADDITIONS TO EXISTING COMPLEX TO CREATE LABORATORIES, LABORATORY SUPPORT SPACES, CONFERENCE ROOMS, CLASSROOMS, AND OFFICES; AND BUILD REPLACEMENT GREENHOUSES AND SUPPORT SPACES FOR GREENHOUSES FOR THE KOMOHANA AGRICULTURAL COMPLEX IN HILO.

|               |     |  |   |          |
|---------------|-----|--|---|----------|
| DESIGN        |     |  |   | 3,070    |
| CONSTRUCTION  |     |  |   | 11,429   |
| EQUIPMENT     |     |  |   | 1        |
| TOTAL FUNDING | UOH |  | C | 14,500C” |

SECTION 98. Act 200, Session Laws of Hawaii 2003, Part V, as amended and renumbered by Act 41, Session Laws of Hawaii 2004, section 6, is amended, by amending section 78.2 to read:

“SECTION 78.2. Provided that of the general obligation bond fund appropriation for Hawaii community development authority (BED 150), the sum of \$450,000 for fiscal biennium 2003-2005 shall be used for an economic master plan for the Kalaeloa Community Development District; and provided further that the sum of \$350,000 shall not be expended [~~no funds shall be expended~~] unless matched on 1:1 basis with funds from federal contributions.”

SECTION 99. Any law to the contrary notwithstanding, the appropriations under Act 289, Session Laws of Hawaii 1993, section 127, as amended and renumbered by Act 252, Session Laws of Hawaii 1994, section 5, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

| <u>“Item No.</u> | <u>Amount (MOF)</u> |
|------------------|---------------------|
| C-41             | \$2,121,000 E”      |

SECTION 100. Any law to the contrary notwithstanding, the appropriations under Act 218, Session Laws of Hawaii 1995, section 99, as amended and renumbered by Act 287, Session Laws of Hawaii 1996, section 5, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

| <u>“Item No.</u> | <u>Amount (MOF)</u> |
|------------------|---------------------|
| C-26             | \$3,859,000 E       |
| C-26             | 640,000 N”          |

SECTION 101. Any law to the contrary notwithstanding, the appropriations under Act 328, Session Laws of Hawaii 1997, section 140A, as amended and renumbered by Act 116, Session Laws of Hawaii 1998, section 5, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

| <u>“Item No.</u> | <u>Amount (MOF)</u> |
|------------------|---------------------|
| I-10             | \$ 150,000 C        |
| I-14             | 30,000 C”           |

SECTION 102. Any law to the contrary notwithstanding, the appropriations under Act 91, Session Laws of Hawaii 1999, section 64, as amended and renumbered by Act 281, Session Laws of Hawaii 2000, section 5, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

| <u>“Item No.</u> | <u>Amount (MOF)</u> |
|------------------|---------------------|
| A-16C            | \$ 70,000 C         |
| G-81             | 70,000 C            |
| G-89             | 211,812 C           |
| G-96             | 292,089 C           |
| G-98A            | 370,000 C”          |

## ACT 178

SECTION 103. Any law to the contrary notwithstanding, the appropriations under Act 259, Session Laws of Hawaii 2001, section 91, as amended and renumbered by Act 3, Third Special Session Laws of Hawaii 2001, section 3, and as further amended and renumbered by Act 177, Session Laws of Hawaii 2002, section 5, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

| <u>Item No.</u> | <u>Amount (MOF)</u> |
|-----------------|---------------------|
| H-10B           | \$ 300,000 C        |
| H-21B           | 2,499,400 D         |

SECTION 104. Any law to the contrary notwithstanding, the appropriations under Act 200, Session Laws of Hawaii 2003, section 77, as amended and renumbered by Act 41, Session Laws of Hawaii 2004, section 5, in the amounts indicated or balances thereof, unallotted, allotted, encumbered and unrequired, are hereby lapsed:

| <u>Item No.</u> | <u>Amount (MOF)</u> |
|-----------------|---------------------|
| A-0.03          | \$ 1,900,000 N      |
| E-5             | 20,000,000 C        |
| F-3.08          | 660,000 C           |
| H-9.01          | 250,000 C           |
| H-9.02          | 250,000 C           |
| H-9.03          | 75,000 C            |

## PART VI. ISSUANCE OF BONDS

SECTION 105. AIRPORT REVENUE BONDS. The department of transportation is authorized to issue airport revenue bonds for airport capital improvement program projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvements program projects, and, if so determined by the department and approved by the governor, any additional principal amount that may be necessary by the department to pay interest on the airport revenue bonds during the estimated period of construction of the capital improvements program project for which the airport revenue bonds are issued, to establish, maintain, or increase reserves for the airport revenue bonds and to pay the expenses of issuance of the bonds. The airport revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on airport revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable solely from and secured solely by the revenues from airports and related facilities under the ownership of the State or operated and managed by the department and the aviation fuel taxes levied and paid pursuant to sections 243-4(a)(2) and 248-8, Hawaii Revised Statutes, or such parts of either thereof as the department may determine, including rents, landing fees, and other fees or charges presently or hereafter derived from or arising through the ownership, operation, and management of airports and related facilities and the furnishing and supplying of the services thereof. The expenses of the issuance of such airport revenue bonds, to the extent not paid from the proceeds of such bonds, shall be paid from the airport revenue fund.

The governor, in the governor's discretion, is authorized to use the airport revenue fund to finance those projects authorized in part II and listed in part IV of

this Act where the method of financing is designated to be by airport revenue bond funds.

**SECTION 106. HARBOR REVENUE BONDS.** The department of transportation is authorized to issue harbor revenue bonds for harbor capital improvement program projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with debt service cost to be paid from special funds, in principal amounts as shall be required to yield the amounts appropriated for capital improvement program projects, and, if determined by the department and approved by the governor, any additional principal amounts as may be deemed necessary by the department to pay interest on the revenue bonds during the estimated construction period of the capital improvement project for which the harbor revenue bonds are issued to establish, maintain, or increase reserves for the harbor revenue bonds or harbor revenue bonds heretofore authorized (whether authorized and issued or authorized and still unissued), and to pay the expenses of issuance of the bonds. The aforementioned harbor revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as they may be amended from time to time. The principal of and interest on harbor revenue bonds, to the extent not paid from the proceeds of the bonds, shall be payable solely from and secured solely by the revenues derived from harbors and related facilities under the ownership of the State or operated and managed by the department, including rents, mooring, wharfage, dockage, pilotage fees, and other fees or charges presently or hereafter derived from or arising through the ownership, operation, and management of harbor and related facilities and the furnishing and supplying of the services thereof. The expenses of the issuance of the harbor revenue bonds, to the extent not paid from the proceeds of the bonds, shall be paid from the harbor special fund.

The governor, in the governor's discretion, is authorized to use the harbor revenue fund to finance those projects authorized in part II and listed in part IV of this Act where the method of financing is designated to be by harbor revenue bond funds.

**SECTION 107. HIGHWAY REVENUE BONDS.** The department of transportation is authorized to issue highway revenue bonds for highway capital improvement projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with the debt service cost to be paid from special funds, in principal amounts required to yield the amounts appropriated for such capital improvement projects, and, if so determined by the department and approved by the governor, any additional principal amounts deemed necessary by the department to pay interest on the highway revenue bonds during the estimated period of construction of the capital improvement project for which such highway revenue bonds are issued, to establish, maintain, or increase reserves for the highway revenue bonds or highway revenue bonds authorized (whether authorized and issued or authorized and still unissued), and to pay all or any part of the expenses related to the issuance of the highway revenue bonds. The highway revenue bonds shall be issued pursuant to part III of chapter 39, Hawaii Revised Statutes, as amended. The principal of and interest on the highway revenue bonds, to the extent not paid from the proceeds of the highway revenue bonds, shall be payable from and secured by the revenues derived from highways and related facilities under the ownership of the State or operated and managed by the department, from the highway fuel taxes, vehicle weight taxes, and vehicle registration fees, levied and paid pursuant to sections 243-4, 248-8, 249-31, and 249-33, Hawaii Revised Statutes, and federal moneys received by the State or any department thereof that are available to pay the principal of or interest on indebtedness of the

State, or any part thereof as the department may determine, and other user taxes, fees, or charges currently or hereafter derived from or arising through the ownership, operation, and management of highways and related facilities and the furnishing and supplying of the services thereof. The expenses related to the issuance of the highway revenue bonds, to the extent not paid from the proceeds of the bonds, shall be paid from the state highway fund.

The governor, in the governor's discretion, is authorized to use moneys in the state highway fund to finance those highway capital improvement projects authorized in part II and listed in part IV of this Act where the method of financing is designated by revenue bond funds.

**SECTION 108. SMALL BOAT HARBOR REVENUE BONDS.** The department of land and natural resources is authorized to issue small boat harbor revenue bonds for small boat harbor capital improvement projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with debt service cost to be paid from special funds. The principal amount of the bonds shall be sufficient to yield the amounts appropriated for capital improvements, and, if determined by the department and approved by the governor, any additional principal amounts deemed necessary by the department to pay interest on the revenue bonds during the construction period of the capital improvement project for which the small boat harbor revenue bonds are issued, to establish, maintain, or increase reserves for the small boat harbor revenue bonds, and to pay the expenses for the issuance of the bonds. The small boat harbor revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as amended. The principal of and interest on the small boat harbor revenue bonds, to the extent not paid from the proceeds of the bonds, shall be payable and secured exclusively by the revenues from small boat harbors and related facilities under the ownership of the State or operated and managed by the department. The revenues shall include rents, mooring, wharfage, dockage, and permit fees, and other fees or charges presently or hereafter derived from or arising through the ownership and operation of small boating activities and the furnishing and supplying of the services thereof. The expenses of the issuance of the small boat harbor revenue bonds, to the extent not paid from the proceeds of the bonds, shall be paid from the harbor special fund.

**SECTION 109. HOSPITAL REVENUE BONDS.** The Hawaii health systems corporation is authorized to issue hospital revenue bonds for hospital capital improvements program projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds, in principal amounts as are required to yield the amounts appropriated for capital improvements program projects, and if determined by the corporation and approved by the governor, any additional principal amount deemed necessary by the corporation to pay interest on the hospital revenue bonds during the estimated period of construction of the capital improvements program project for which the hospital revenue bonds are issued, to establish, maintain, or increase reserves for the hospital revenue bonds, and to pay all or any part of the expenses related to the issuance of the hospital revenue bonds. The hospital revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as amended, except that the bonds shall be issued in the name of the corporation and not in the name of the State. The principal of and interest on the hospital revenue bonds, to the extent not paid from the proceeds of the hospital revenue bonds, shall be payable from and secured by the revenues derived from facilities under the ownership of the corporation or operated and managed by the corporation, or any part thereof as the corporation may determine, including other moneys, rates, rents, fees, or charges currently or hereaf-

ter derived from or arising through the ownership, operation, and management of hospitals and related facilities and the furnishings and supplying of the services thereof. The expenses related to the issuance of the hospital revenue bonds, to the extent not paid from the proceeds of the bonds, shall be paid from the facility administration fund of the corporation.

## PART VII. SPECIAL PROVISIONS

**SECTION 110. GOVERNOR'S DISCRETIONARY POWERS.** Any law or provision to the contrary notwithstanding, the governor may replace general obligation bond funds appropriated for capital improvement projects with general obligation reimbursable bond funds, when the expenditure of the general obligation reimbursable bond funds is deemed appropriate for the project.

**SECTION 111.** All general obligation bond funds used for a public undertaking, improvement, or system designated by the letter (D) shall have the bond principal and interest reimbursed from the special fund in which the net revenue, or net user tax receipts, or combination of both, of such public undertaking, improvement or system, are deposited or credited. Bonds issued for irrigation and housing projects shall be reimbursed as provided by section 174-21 and chapter 201E, Hawaii Revised Statutes, respectively.

The governor is authorized to use, at the governor's discretion, the state highway fund, the harbor special fund, the boating special fund, the airport revenue fund, the special land and development fund, or other appropriate special funds to finance the respective public undertaking, improvement, or system described above and authorized in this Act, where the method of financing is designated to be general obligation bond fund with debt service cost to be paid from the funds; provided that the governor shall submit a report to the legislature on such changes in the method of financing of such projects.

**SECTION 112.** Provided that in the event that the authorized appropriations specified for a capital improvement project listed in this Act are insufficient and where the source of funding is designated as special funds, general obligation bond fund with debt service cost to be paid from special funds, revenue bond funds, or revolving funds, the governor may make supplemental allotments from the special fund or revolving fund responsible for cash or debt service payments for the projects or transfer unrequired balances from other completed and unexpired projects in this Act or prior appropriation acts which authorized the use of special funds, general obligation bond fund with debt service costs to be paid from special funds, revenue bond funds, or revolving funds; provided that such supplemental allotments shall not be used to increase the scope of the project; provided further that such supplemental allotments shall not impair the ability of the fund to meet the purposes for which it was established; and provided further that the governor shall notify the legislature within five days of each use of the authority granted by this proviso and submit a summary report to the legislature of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.

**SECTION 113.** Provided that in the event that the authorized appropriations specified for a capital improvement project listed in this Act are insufficient and where the source of funding is designated as airport passenger facility charge funds, the governor may make supplemental allotments from unrequired balances from the airport revenue fund or airport revenue bond funds or transfer unrequired balances from other completed but unexpired projects in this Act or prior appropriation acts

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that authorized the use of airport passenger facility charge funds; provided further that the supplemental allotments shall not be used to increase the scope of the project; provided further that the supplemental allotments shall not impair the ability of the fund to meet the purposes for which it was established; and provided further that the governor, in the governor's discretion, is authorized to increase the passenger facility charge fund authorization ceiling for the program to accommodate the expenditure of the funds.

SECTION 114. Provided that the governor may supplement funds for any cost element for a capital improvement project authorized under this Act by transferring the sums as may be needed from the funds appropriated for other cost elements of the same project by this Act or any other prior or future Act that has not lapsed; provided further that the total expenditure of funds for all cost elements shall not exceed the total appropriations for that project; and provided further that the governor shall notify the legislature within five days of each use of this proviso and submit a report to the legislature of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.

SECTION 115. Provided that after the objectives and purposes of the appropriations made in this Act from the general obligation bond fund for capital improvement projects have been met, unrequired balances may be transferred to the project adjustment fund appropriated in part II and described in part IV of this Act and shall be considered a supplementary appropriation thereto; provided further that all other unrequired allotment balances, unrequired appropriation balances, and unrequired encumbrance balances shall lapse as of June 30, 2008, as provided in section 119 of this Act; and provided further that the governor shall notify the legislature within five days of each use of this proviso and submit a report to the legislature of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.

SECTION 116. Provided that in the event that authorized appropriations specified for capital improvement projects listed in this Act or in any other Act currently authorized by the legislature are insufficient, and where the source of funding for the project is designated as the general obligation bond fund, the governor may make supplemental allotments from the project adjustment fund appropriated in part II and described in part IV of this Act to supplement any currently authorized capital investment cost elements; provided further that the supplemental allotments from the project adjustment fund shall not be used to increase the scope of the project; and provided further that the governor shall notify the legislature within five days of each use of this proviso and submit a report to the legislature of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.

SECTION 117. After the objectives and the purposes of appropriations made in this Act for capital investment purposes from the state educational facilities improvement special fund have been met, any unrequired balances shall be transferred to the special funded project adjustment fund for state educational facilities appropriated in part II and described further in part IV, and shall be considered a supplementary appropriation thereto.



SECTION 118. Provided that in the event that currently authorized appropriations specified for capital investment purposes listed in this Act or in any other Act currently authorized by the legislature are insufficient, and where the source of funding for the project is designated as the state educational facilities improvement special fund, the governor may make supplemental allotments from the special funded project adjustment fund for state educational facilities appropriated in part II and described further in part IV; provided further that the supplemental allotments from the special funded project adjustment fund for state educational facilities shall not be used to increase the scope of the project and may only be made to supplement currently authorized capital investment project cost elements.

SECTION 119. Any law or any provision of this Act to the contrary notwithstanding, the appropriations made for capital improvement projects authorized under this Act shall not lapse at the end of the fiscal biennium for which the appropriation is made; provided that all appropriations made to be expended in fiscal biennium 2005-2007 that are unencumbered as of June 30, 2008 shall lapse as of that date; provided further that this lapsing date shall not apply to: (a) appropriations for projects described in section 85 of this Act where the means of funding is designated to be the state educational facilities improvement special fund, and where such appropriations have been authorized for more than three years for the construction or acquisition of public school facilities; and (b) non-general fund appropriations for projects described in section 85 of this Act where such appropriations have been deemed necessary to qualify for federal aid financing and reimbursement.

SECTION 120. Provided that where it has been determined that changed conditions, such as a reduction in the particular population being served, permit the reduction in the scope of a capital improvement project described in this Act, the governor may authorize a reduction of the project scope; provided further that the governor shall notify the legislature within five days of each use of this proviso and submit a report to the legislature of all uses of this proviso for the previous twelve month period from December 1 to November 30; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.

SECTION 121. Provided that in releasing funds for capital improvement projects, the governor shall follow legislative intent; provided further that the governor may consider the objectives of the user agency and its programs, the scope and level of the user agency's intended service, and the means, efficiency, and economics by which the project will meet the objectives of the user agency and the State; provided further that agencies responsible for construction shall follow legislative intent; and provided further that these agencies may consider the objectives of the user agency, its programs, and the scope and level of the user agency's intended service and construct the improvement to meet the objectives of the user agency in the most efficient and economical manner possible.

SECTION 122. Provided that with the approval of the governor, designated expending agencies for capital improvement projects authorized in this Act may delegate to other state or county agencies the implementation of projects when it is determined advantageous to do so by both the original expending agency and the agency to which expending authority is to be delegated; provided further that the governor shall notify the legislature within five days of each use of this proviso and submit a report to the legislature of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.

**SECTION 123.** Provided that the governor may authorize the expenditure of funds for capital improvement projects not previously authorized in this Act to cope with the effects of natural disasters or unforeseen emergencies, when the effects of the natural disaster or unforeseen emergencies create an urgent need to pursue a course of action that is in the best interest of the State; provided further that no funds shall be expended without a formal declaration of a natural disaster or emergency by the governor; provided further that the governor shall use the project adjustment fund authorized in part II and described in part IV to accomplish the purposes of this section; and provided further that the governor shall notify the legislature within five days of each use of this proviso and submit a report to the legislature of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.

**SECTION 124.** Provided that notwithstanding any provision in part III of this Act, the governor is authorized to transfer savings or unrequired balances as may be available from the appropriated funds of any program in this Act to supplement the appropriation for any other program in this Act to cope with the effects of natural disasters or other unforeseen emergencies; provided further that no funds shall be expended without a formal declaration of a natural disaster or emergency by the governor; provided further that the effects of the natural disaster or emergencies create an urgent need to pursue a course of action that is in the best interest of the State; provided further that the use of the funds does not conflict with general law; and provided further that the governor shall notify the legislature within five days of each use of this proviso and submit a report to the legislature of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.

**SECTION 125.** No appropriation authorized in this Act for expenditure by a political subdivision of this State shall be considered to be a mandate to undertake new programs or to increase the level of services under existing programs of that political subdivision. If any appropriation authorized in this Act constitutes a mandate within the provisions of section 5 of article VIII of the Hawaii State Constitution, the authorization shall be void and, in the case of capital improvement appropriations designated to be financed from the general obligation bond fund, the total general obligation bonds authorized for the projects shall be correspondingly decreased.

**SECTION 126.** There is hereby appropriated out of the public trust fund created by section 5(f) of the Admissions Act (Public Law No. 86-3) the total amount of the proceeds from the sale or other disposition of any lands, and the income therefrom granted to the State by section 5(b) or later conveyed to the State by section 5(e), with the exception of such proceeds covered under section 171-19, Hawaii Revised Statutes, to be disposed of by the board of land and natural resources, and with the exception of the proceeds to be expended by the office of Hawaiian affairs under chapter 10, Hawaii Revised Statutes, in order to reimburse the general fund for the appropriation made in part II of this Act to the department of education for the support of public schools, to the extent the proceeds are realized for the period beginning July 1, 2005 to June 30, 2007. The above proceeds shall be exclusive of the amount disposed of under the provisions of the Hawaiian Homes Commission Act of 1920, as amended.

**SECTION 127.** All grants to private organizations in this Act are made in accordance with the standard that the private programs so funded yield direct benefits to the public and accomplish public purposes.

SECTION 128. Whenever the expending agency to which an appropriation is made is changed due to legislation enacted during any session of the legislature that affects the appropriations made by this Act, the governor shall transfer the necessary funds and positions to the proper expending agency as provided by law.

SECTION 129. In the event the State assumes the direct operation of any non-governmental agency receiving state funds under the provisions of this Act, all such funds shall constitute a credit to the State against the costs of acquiring all or any portion of the property, real, personal, or mixed, of the non-governmental agency. This credit shall be applicable regardless of when the acquisition takes place.

SECTION 130. Provided that in the event that unanticipated federal funding cutbacks diminish or curtail essential, federally-funded state programs, the governor may utilize savings as determined to be available from other state programs for the purpose of maintaining the programs until the next legislative session; provided further that the governor shall notify the legislature within five days of each use of this proviso and submit a report to the legislature of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.

SECTION 131. Provided that the governor may approve the expenditure of federal funds which are in excess of levels authorized by the legislature only in the event that the expenditure is made for the benefit of the public; provided further that the governor may allow for an increase in the federal fund authorization ceiling for the program to accommodate the expenditure of such funds; provided further that prior to the governor's approval to expend these funds the governor shall submit a report to the legislature; provided further that the report shall include the date when the program to receive the federal funds was first notified that additional federal funds may be available, the date that additional federal funds were known to be available, and the reasons why additional federal fund appropriations were not sought during the preceding legislative session, and an explanation of the public benefit; provided further that in the event of federal funds received as the result of a natural or manmade disaster the governor may submit notification to the legislature within five days after the governor's approval to expend funds has been granted; and provided further that the governor shall submit a summary report of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.

SECTION 132. Except as otherwise provided by law, negotiations for the purchase of land by state agencies shall be subject to the approval of the board and the department of land and natural resources, or other appropriate agency; provided that private lands may be acquired for the purpose of exchange for federal lands when the board of land and natural resources determines that the acquisition and exchange are necessary for the completion of any project specifically authorized by this Act.

SECTION 133. Except as otherwise provided, or except as prohibited by specific grant conditions, all federal or non-general fund reimbursements received by state programs shall be returned to the general fund or fund of originating expense.

SECTION 134. Unless otherwise provided in this Act, the governor is authorized to transfer operating funds between appropriations within the same fund, within an expending agency, for operating purposes; provided further that the

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governor shall submit a report to the legislature within five days of each use of this proviso; provided further that the report shall include the date of the transfer, the amount of the transfer, the program ID from which funds were transferred, the program ID to which funds were transferred, a detailed explanation of the public purposes served by the transfer of resources, and the impact to the department from which the funds were originally assigned; and provided further that the governor shall submit to the legislature a summary report containing the aforementioned information for each use of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.

SECTION 135. Except as otherwise provided in this Act, each department or agency is authorized to transfer positions within its respective authorized position ceiling for the purpose of maximizing the utilization of personnel resources and staff productivity; provided that all actions shall be with the prior approval of the governor and shall be consistent with appropriations provided in this Act and with provisions of part II of chapter 37 of the Hawaii Revised Statutes; and provided further that the governor shall submit a report to the legislature within five days of each use of this proviso; provided further that the report shall include the date of the transfer, the position transferred, the program from which the position was transferred, the program to which the position was transferred, responsibilities of the position prior to transfer, the responsibilities of the position after the transfer, and the manner in which the transfer maximizes the utilization of personnel resources and staff productivity; and provided further that the governor shall submit to the legislature a summary report of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.

SECTION 136. Any law or provision to the contrary notwithstanding, in expending funds for social welfare programs, education programs, and other programs and agencies having appropriations which are based on population and workload data as specified in the executive budget document, only so much as is necessary to provide the level of services intended by the legislature shall be expended. Affected agencies shall reduce expenditures below appropriations under procedures prescribed by the department of budget and finance in the event actual population and workload trends are less than the figures projected; provided that the department of budget and finance shall notify the legislature within five business days of each application of this proviso and submit a report of all applications of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.

SECTION 137. With the approval of the governor, agencies that use appropriations authorized in part II of this Act for audit services may delegate that responsibility and transfer funds to the internal post audit program (AGS 104), when it is determined by the agencies that it is advantageous to do so.

SECTION 138. With the approval of the governor, expending agencies that use appropriations authorized in part II of this Act for planning, land acquisition, design, construction, and equipment for repair and alterations may delegate responsibility and transfer funds to the construction program (AGS 221) for the implementation of the repair and alterations, when it is determined by the agencies that it is advantageous to do so.

SECTION 139. Agencies with appropriations authorized in part II of this Act for risk management costs shall transfer funds authorized for that purpose to risk management (AGS 203) for the administration and implementation of state risk management costs and expenses, except as otherwise provided by law; provided that the department of accounting and general services shall submit a report to the legislature on the transfer of funds for risk management; provided further that the report shall include the date of any transfers, the amount of all actual transfers, amount of any additional anticipated transfers, and the amount budgeted for each agency for the preceding and current fiscal year in which the report is submitted; provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions; provided further that the department shall be assessed a fee of \$10,000 for each business day beyond the date that the report is due; and provided further that the comptroller shall deposit all assessments to the general fund.

SECTION 140. With the approval of the governor, the Hawaii health systems corporation in the department of health may transfer to the department of human services funds appropriated to the Hawaii health systems corporation for the care and treatment of patients, whenever the department of human services can utilize the funds to match federal funds that may be available to help finance the cost of outpatient, acute hospital, or long-term care of indigents or medical indigents in designated critical access hospitals; provided that the director of finance shall notify the legislature within five days of each use of this proviso and submit a report to the legislature of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.

SECTION 141. With the approval of the governor, the department of health may transfer to the department of human services funds appropriated to the department of health for the care and treatment of patients, whenever the department of human services can utilize the funds to match federal funds to finance the cost of outpatient, hospital, or skilled nursing home care of indigents or medical indigents; provided that the governor shall notify the legislature within five days of each use of this proviso and submit a report of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.

SECTION 142. The department of human services is authorized to enter into agreements with the department of health to furnish outpatient, hospital, and skilled nursing home care of indigents or medical indigents and to pay the department of health for the care; provided that with the approval of the director of finance, the department of health may deposit part of the receipts into the appropriations from which transfers were made, as provided elsewhere in this Act; and provided further that the governor shall notify the legislature within five days of each use of this proviso and submit a report of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.

SECTION 143. The governor may authorize the transfer of positions and funds between the department of health and the department of education to address Felix Consent Decree requirements; provided that any transfers shall be based upon the transfer of responsibility for Felix clients or treatments between the department of health and the department of education; and provided further that the governor shall notify the legislature within five days of each use of this proviso and submit a

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report to the legislature of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.

SECTION 144. Provided that of the appropriation for each principal state department as defined by section 26-4, Hawaii Revised Statutes, the sum of \$2,500 in fiscal year 2005-2006 and the sum of \$2,500 in fiscal year 2006-2007 shall be made available in each department to establish as a separate account for a protocol fund to be expended at the discretion of the executive head of the department (i.e. director, chairperson, comptroller, adjutant-general, superintendent, state librarian, president, or attorney general).

SECTION 145. Provided that of the general fund appropriation for financial administration (BUF 115), the sum of \$4,000 for fiscal year 2005-2006 and the sum of \$4,000 for fiscal year 2006-2007 may be used to establish a separate protocol account to be expended at the discretion of the director of finance for the promotion and improvement of state bond ratings and sales; provided further that the director of finance shall submit a detailed report of all expenditures made from the protocol account for fiscal years 2003-2004 and fiscal year 2004-2005 no later than July 15, 2005; provided further that this report shall include the date of any expenditure, the purpose of the expenditure, the name of the entity that received the funds, and an explanation of the manner in which the expenditures promoted and improved the state bond ratings and sales; and provided further that this same information shall be provided for expenditures made during the fiscal years 2005-2006 and 2006-2007 no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.

SECTION 146. Provided that the department of budget and finance shall post on its website all finance memorandums and executive memorandums on the same day that the memorandums are distributed; provided further that all attachments to the memorandums shall also be posted; and provided further that all finance memorandums and executive memorandums issued since January 1, 2000, shall also be posted.

SECTION 147. Provided that of the special fund appropriation for spectator events and shows - Aloha Stadium (AGS 889), the sum of \$2,500 for fiscal year 2005-2006 and the sum of \$2,500 for fiscal year 2006-2007 may be expended at the discretion of the stadium manager for promotion and other stadium-related purposes.

SECTION 148. Except as otherwise provided, the appropriation for the office of the governor (GOV 100) shall be expended at the discretion of the governor; provided that the office of the governor shall include in the 2005 variance report and executive budget supplement a listing of data collected for performance measures including, the measures of effectiveness, program target groups, and program activities.

SECTION 149. Except as otherwise provided, the appropriation for the office of the lieutenant governor (LTG 100) shall be expended at the discretion of the lieutenant governor; provided that the office of the lieutenant governor shall include in the 2005 variance report and executive budget supplemental a listing of data collected for performance measures including, the measures of effectiveness, program target groups, and program activities.

SECTION 150. Provided that of the appropriations authorized for executive programs in part II of this Act for fiscal year 2005-2006 and fiscal year 2006-2007,

settlements and judgments approved by the legislature in Senate Bill No. 673,<sup>1</sup> shall be funded within each program's departmental allocation for the respective fiscal year.

SECTION 151. Provided that in the event that the amount of settlements and judgments approved by the legislature in Senate Bill No. 673,<sup>1</sup> exceeds program allocations for fiscal year 2005-2006 or fiscal year 2006-2007, as applicable, for the purposes of meeting such obligations:

- (1) A department, with the approval of the governor, is authorized to utilize allocated savings determined to be available from any other program within the department; and
- (2) Unless otherwise provided by law, the governor is authorized to transfer funds between allocations of appropriations within a department for the purposes of paying settlements and judgments of a program.

SECTION 152. The director of finance is authorized to expend general fund, special fund, and revolving fund savings or balances determined to be available from authorized general fund, special fund, and revolving fund program appropriations, up to an aggregate of \$20,000,000 for fiscal year 2005-2006 and \$20,000,000 for fiscal year 2006-2007, for municipal lease payments under financing agreements entered into pursuant to chapter 37D, Hawaii Revised Statutes, to finance the acquisition of depreciable assets, including, but not limited to, automobiles, computers, printers, and telecommunications equipment; and provided further that designated expending agencies (including the department of education and the University of Hawaii) for municipal lease payments and for depreciable assets, including, but not limited to, automobiles, computers, printers, and telecommunications equipment authorized in this Act may delegate to the director of finance the implementation of the acquisitions when it is determined by all involved agencies that it is advantageous to do so.

SECTION 153. Provided that the department of budget and finance shall complete a comprehensive assessment each year analyzing the adequacy of federal funding for the department of education's federal mandate of meeting and maintaining compliance with the No Child Left Behind Act of 2001; provided further that this assessment shall include, but not be limited to, identifying department of education needs, such as funding, positions (full time equivalents, temporary, and others), facilities and equipment, and statutory or constitutional amendments necessary to maintain compliance with the No Child Left Behind Act; provided further that this assessment shall discuss the nexus between each identified department need and the mandated requirement to justify current and additional resources; and provided further that this assessment shall be submitted to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.

SECTION 154. Provided that the state auditor shall conduct a report on the hiring policies and practices of the executive branch of government, including the implementation of the hiring policies established by the budget execution policies and instructions and shall include an assessment of the implementation of the policies, on a sampling of programs; provided further that the report shall include estimates of savings realized as a result of the hiring policy as identified by the department of budget and finance; and provided further that this report shall be submitted to the legislature.

SECTION 155. Provided that for all notification and reporting requirements in this Act, copies of the notification or report shall be submitted to the senate

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president's office, the speaker of the house of representative's office, the senate ways and means committee chairperson's office, the house of representative's finance committee chairperson's office, and to the appropriate standing committees' chairperson's office that has oversight responsibilities over the state program affected; provided further that the notification and report shall be posted on the website of the agency responsible for submitting the notification or report.

SECTION 156. Provided that of the federal fund appropriation for the department of human services there is appropriated current year federal Temporary Assistance for Needy Families (TANF) funds, which are federal TANF funds from the current federal fiscal year's block grant, the sum of \$63,904,788, or so much thereof as may be necessary, for fiscal year 2005-2006, and the same sum, or so much thereof as may be necessary, for fiscal year 2006-2007 for the purposes of implementing the TANF program, its associated programs, and transfers to other programs.

SECTION 157. Provided that of the federal fund appropriation for the department of human services there is appropriated carry-over federal funds in the sum of \$45,000,000 or so much thereof as may be necessary for fiscal year 2005-2006, and the same sum, or so much thereof as may be necessary for fiscal year 2006-2007 for the purpose of implementing the TANF program and its associated programs.

SECTION 158. Provided that for the department of human services no funds shall be expended from the carry-over federal TANF funds or the current year federal funds, except as appropriated in this Act.

SECTION 159. The department of human services shall submit a report to the legislature on all vacant positions that have been vacant for a period longer than one year; provided that this report shall include a listing of each position, program ID to which the position is assigned, position number, budgeted salary, an explanation of what the department of human services is using the budgeted salary for, identification of the cumulative amount of budgeted salary that has not been used to pay for the position since it became vacant, and the anticipated fill date for the position; provided further that if the vacant position is federally funded and not filled due to inadequate federal funds, the department of human services shall identify when additional federal funds to fill the position are anticipated; and provided further that this report shall be submitted to the legislature on a quarterly basis and posted on the department of human services website.

SECTION 160. Provided that the federal funds from the medicaid state plan which allows the department of human services to claim federal funding for the uncompensated care under its medicaid fee-for-service program will be used for those facilities that experience a reduction in payments as a result of the implementation of the medicaid reimbursement equity law, Hawaii Revised Statutes, Section 346D-1.5 and for public hospitals and nursing homes to leverage available federal funds; provided further of the \$14,775,000 in fiscal year 2006 and \$11,070,000 in fiscal year 2007 that is estimated to be received by the department of human services, \$1,849,000 in fiscal year 2006 and \$1,295,000 in fiscal year 2007 in state matching funds shall be paid to the private facilities that experience a loss due to the implementation of HRS, Section 346D-1.5, \$4,120,000 in fiscal year 2006 and \$2,843,000 in fiscal year 2007 in state matching funds shall be paid to the public facilities that experience a loss due to the implementation of HRS, Section 346D-1.5, and \$8,806,000 in fiscal year 2006, and \$6,932,000 in fiscal year 2007 may be



used by the department of human services as State contributions for Medicaid-qualified expenses at public hospitals and nursing homes; provided further that the accompanying federal funds shall also be paid to the private and public facilities; provided further that after such payments any remaining funds shall be lapsed into the state general fund; provided further that all payments from the department of human services to providers of services must be in compliance with Medicaid rules and regulations; and provided further that the Hawaii health systems corporation shall submit a quarterly report to the legislature on the certification of losses under the state plan amendment.

SECTION 161. Provided that of the special, trust, and revolving fund appropriations for legal services (ATG 100), state criminal justice information and identification (ATG 231), and child support enforcement services (ATG 500), the attorney general shall submit a comprehensive report concerning all special, trust, and revolving funds within the department of the attorney general, whether created by statute or otherwise including, but not limited to the following:

- (1) The source and amount of all revenue for each fund;
- (2) Detailed accounts of all expenditures from each fund;
- (3) The purpose of all expenditures from each fund;
- (4) The source of revenue for each fund;

and provided further that:

- (1) Each fund shall be treated separately in the report; and

(2) Litigation settlements shall be done separately by each sub-account; provided further that the report shall be submitted under the above established guidelines to the legislature for the preceding completed fiscal year no later than twenty days prior to the convening of the 2006 and 2007 regular sessions; provided further that the department shall be assessed a fee of \$10,000 for each business day beyond the date that the report is due; and provided further that the attorney general shall deposit all assessments to the general fund.

SECTION 162. Provided that the department of human services shall submit notification to the legislature for each transfer of funds between program ID and for each transfer between cost elements; provided further that this notification shall include an explanation of each transfer, including the program ID from which the funds were transferred, the program ID to which the funds were transferred, the cost element from which the funds were transferred, the cost element to which funds were transferred, amount of the transfer, impact of not expending the funds for the program ID for which the funds were appropriated, impact of not expending the funds for the cost element for which the funds were appropriated, and the reasons for transferring the funds to another cost element; and provided further that this report shall be submitted to the legislature on a quarterly basis for the previous twelve months within two weeks after the end of the quarter.

SECTION 163. Provided that the university of Hawaii shall submit to the legislature a report on the revenues, distributions, expenditures, and ending balances from the research and training revolving fund; provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions; provided further that the department shall be assessed a fee of \$10,000 for each business day beyond the date that the report is due; and provided further that the president of the university shall deposit all assessments to the general fund.

SECTION 164. The governor shall submit to the legislature a report by August 1, 2005, detailing all deployments of positions between program IDs and to

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other departments; provided further that the report shall include the position description, position number, the program ID to which the position was originally assigned, the program ID and department to which the position was transferred, the changes in the position description, a narrative discussion detailing why the position was moved, the anticipated duration of this deployment, the specific reasons that the deployment will result in a more efficient functioning of the department, and the impact to the program from which the position was originally assigned; provided further that updates to this report shall be submitted to the legislature with each deployment made subsequent to those identified in the initial report no later than five business days after the initiation of each deployment; and provided further that the governor shall submit a summary report of all deployments made for the proceeding<sup>1</sup> twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.

SECTION 165. Provided that no position funded by federal funds shall be allocated or assigned to any program other than the program for which the federal funds are appropriated.

SECTION 166. Provided that the trust fund appropriation included in this Act shall not bind the department of Hawaiian home lands to conform to the executive budget execution policies and allotment process for the expenditure of trust funds; provided further that the expenditure of trust funds shall be made consistent with the provisions of the Hawaiian Homes Commission Act of 1920 as amended; provided further that the department of Hawaiian home lands shall submit a report to the legislature of all actual expenditure of trust funds for operating purposes for fiscal year 2005 and fiscal year 2006 (actual and projected); and provided further that this report shall include a breakdown of expenditures by cost element, a list of all positions funded by the trust fund (including position number, title, actual salary, and job description), and a listing of all contracts entered into (including the name of the contractor, amount of the contract, and purpose of the contract) to the legislature no later than<sup>1</sup> August 15, 2005 and an updated report no later than twenty days prior to the convening of the 2006 legislative session.

SECTION 167. Provided that for fiscal year 2006-2007 no funds, including federal funds, shall be expended to fill any position not authorized by the legislature; provided further that a report shall be prepared by the department of budget and finance identifying all positions not authorized by the legislature (both filled and vacant) in the Executive Branch with the exception of the department of education and the university of Hawaii; provided further that this report shall include for each position the authority used to establish the position, the date the position was established, whether the position is filled or vacant, if the position is vacant the date the position became vacant, if the position is filled the date the position was filled, the amount expended for the position for fiscal year 2004-2005, the amount projected to be expended in fiscal year 2005-2006, the amount projected to be expended for fiscal year 2006-2007, the source of funds used to pay for the position, the impact of eliminating the position and funds projected to be expended for the position; and provided further that the report shall be submitted to the legislature no later than October 1, 2005.

SECTION 168. Provided that in implementing Act 51, Session Laws of Hawaii 2004, the department of accounting and general services and the department of education, with the approval of the director of finance, may each transfer positions and funds to the other; provided that the transfers are necessary for the operations of each department's capital improvement and repair and maintenance

programs; provided further that each department shall submit a report of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.

## PART VIII. MISCELLANEOUS AND EFFECTIVE DATE

SECTION 169. MISCELLANEOUS. If any portion of this Act or its application to any person, entity, or circumstance is held to be invalid for any reason, then the legislature declares that the remainder of the Act and each and every other provision thereof shall not be affected thereby. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be expended to fulfill the objective of such appropriation to the extent possible.

SECTION 170. In the event manifest clerical, typographical or other mechanical errors are found in this Act, the governor is hereby authorized to correct such errors.

SECTION 171. Material to be repealed is bracketed and stricken. New material in prior enacted laws is underscored.

SECTION 172. This Act shall take effect on July 1, 2005.

(Approved June 30, 2005.)

### Notes

1. So in original.
2. Act 55.

## ACT 179

H.B. NO. 841

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

### PART I

SECTION 1. (a) The department of education is in the process of reinventing itself through Act 51, Session Laws of Hawaii 2004, also known as the Reinventing Education Act of 2004 (Act 51). The fundamental premise of Act 51 is defined by three distinct efforts:

- (1) Empowerment of schools;
- (2) Accountability for specific outcomes; and
- (3) The streamlining of the department of education through more autonomy and independence from other agencies.

(b) The department of education's information systems and infrastructure require major upgrades to accommodate and enable the following outcomes over the next five years:

- (1) Providing student longitudinal data analysis to assist in targeting specific student populations to raise student achievement;
- (2) Increasing the number of students graduating from the entering freshmen class;
- (3) Increasing the level of parental involvement through online access of student attendance, homework, and progress;
- (4) Reducing the time it takes to handle teacher transfer and assignment;
- (5) Reducing the number of seniors not graduating;

- (6) Increasing the number of teachers having ready access to student information;
- (7) Automating the academic and financial planning processes for all schools;
- (8) Automating school accountability; and
- (9) Supporting all personnel transferred from the departments of accounting and general services, human resources development, human services, and other agencies to the department of education.

The purpose of this part is to appropriate funds to assist in the continued implementation of Act 51.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2005-2006 and the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2006-2007 to:

- (1) Subsidize information systems projects;
- (2) Provide additional support personnel and training;
- (3) Provide additional data processing systems analyst IV and additional data processing systems analyst V positions in fiscal year 2006-2007;
- (4) Hire any other information technology personnel deemed necessary by the department of education to continue implementation of Act 51, Session Laws of Hawaii 2004; and
- (5) Continue the implementation of Act 51, Session Laws of Hawaii 2004.

The sums appropriated shall be expended by the department of education for the purposes of this part.

## PART II EDUCATION-WORKFORCE PIPELINE

SECTION 3. One of the most important priorities stressed by the workforce development council planning committee is that “[m]ore people must enter and continue in Hawaii’s pipeline to post-secondary education, as the future jobs generally require education beyond high school.” The need for commitments of this nature underscores the critical role that education plays in workforce development. Educational initiatives that help to move people into the education-workforce pipeline, whether they be academic or more vocational-technical in nature, must be supported to ensure a healthy future for Hawaii’s economy.

The purpose of this part is to improve the composition of the workforce development council.

SECTION 4. Section 202-1, Hawaii Revised Statutes, is amended to read as follows:

**“§202-1 Council; appointment; tenure.** The advisory commission on employment and human resources is hereby constituted as the workforce development council. The council shall also fulfill the functions of the state workforce investment board for purposes of the federal Workforce Investment Act of 1998, Public Law No. 105-220.

Except for the ex officio members or their designees, the council members shall be appointed for four-year staggered terms as provided for in section 26-34. The governor shall appoint the chairperson of the council and the two mayors to the council. The council shall be composed of thirty-one members. The members shall be selected on the basis of their interest in and knowledge of workforce development programs in the State and how they can support economic development. The council

shall be composed of the following representatives of [~~which~~] whom the majority shall be from the private sector:

- (1) The directors of labor and industrial relations, human services, and business, economic development, and tourism; the superintendent of education; and the president of the University of Hawaii or their designees, as ex officio voting members;
  - (2) The private business sector chairpersons of the four county workforce investment boards, or their designees from the private business sector membership of their respective boards, as ex officio voting members;
  - ~~[(2)]~~ ~~Sixteen~~ (3) Twelve additional private sector representatives from business~~[, including at least one member from each of the four county workforce development boards];~~
  - ~~[(3)]~~ (4) One representative from a community-based native Hawaiian organization that operates workforce development programs;
  - ~~[(4)]~~ (5) Two representatives from labor;
  - ~~[(5)]~~ (6) Four members of the legislature, two from each house~~;~~ for two-year terms beginning in January of odd-numbered years, appointed by the appropriate presiding officer of each house, as ex officio voting members;
  - ~~[(6)]~~ (7) Two mayors or their designees, as ex officio voting members; and
  - ~~[(7)]~~ (8) The governor or the governor's designee.
- The members shall serve without compensation but shall be entitled to travel expenses when actually engaged in business relating to the work of the council."

### PART III

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval; provided that section 2 shall take effect on July 1, 2005.

(Approved June 30, 2005.)

## ACT 180

H.B. NO. 168

A Bill for an Act Making an Appropriation for Agricultural Research and Development.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that agriculture is vitally important to Hawaii. Agriculture not only plays an important role in the state's economy by providing a stage for tourism, employment opportunities, and products for export, but it also performs a public service by perpetuating a rural lifestyle for Hawaii's residents and providing stewardship for Hawaii's lands and water.

With the demise of the plantations that once controlled vast acres of pineapple and sugar, it is imperative that Hawaii's agricultural industry diversify. The agricultural industry should also explore new opportunities as prime agricultural land becomes available.

Currently, Hawaii's agriculture and value-added products contribute \$2,400,000,000 to the state's economy and employ more than thirty-eight thousand people. During the past twenty years, the value of diversified agriculture in Hawaii

more than doubled, reaching a record \$370,900,000 in farm-level revenues in 2002. The prime agricultural lands released from sugar and pineapple production present a rare window of opportunity to further agricultural development. At present, about one hundred thousand acres of former sugar and pineapple land lie fallow, awaiting economically viable agribusinesses. Recent estimates suggest that if all this land could be put to productive use in successful agricultural ventures, an additional \$1,700,000,000 to \$4,400,000,000 could be added to the state's economy.

To provide the necessary support for the transition of Hawaii's agricultural industry from plantation agriculture to diversified agriculture, more resources must be directed toward agricultural research and market development.

Agricultural research is the foundation upon which Hawaii's agricultural industry can remain competitive in an increasingly global market. To maximize the opportunities for expanding the agricultural industry and to take advantage of thousands of acres of available prime agricultural farmlands, production-driven research is of paramount importance.

The legislature finds that the Hawaii Agriculture Research Center, the University of Hawaii - college of tropical agriculture and human resources, the department of agriculture, and the United States Department of Agriculture Pacific Basin Agricultural Research Center should work collaboratively to expand their agricultural research efforts. These research organizations are an important resource in the State's effort to strengthen and improve the agricultural industry, revitalize the economy, and expand employment opportunities for residents.

The legislature further finds that the Hawaii Farm Bureau Federation is a non-profit agricultural organization representing the interests of, and exemplifying a strong commitment to, the agricultural industry in Hawaii and can ensure that agricultural research and marketing meet the needs of the industry's farmers and ranchers. Moreover, the Hawaii Farm Bureau Federation has frequently partnered with institutions like the Hawaii Agriculture Research Center, University of Hawaii-college of tropical agriculture and human resources, and the department of agriculture on many research and market development projects. The Hawaii Farm Bureau Federation has also been working with all types of commodity organizations, including sugar, pineapple, papaya, macadamia, coffee, flower, fruit, vegetable, aquaculture, seed corn, forestry, and livestock organizations, to formulate the research needs for the entire agricultural industry. Therefore, the legislature finds that the logical organization to oversee and expend the funding for agricultural research and market development is the Hawaii Farm Bureau Federation.

Hawaii must diversify its economic base beyond a reliance on tourism. A revived and revitalized state agricultural industry promises not only to diversify Hawaii's economy but also to sustain and stabilize Hawaii's food supply and protect the open space and lifestyle that both residents and visitors value.

The purpose of this Act is to provide funding for the Hawaii Farm Bureau Federation to conduct agricultural research and market development.

**SECTION 2.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2005-2006 for the Hawaii Farm Bureau Federation to conduct agricultural research and market development.

The sums appropriated shall be expended by the department of agriculture for the purposes of this Act.

**SECTION 3.** This Act shall take effect on July 1, 2005.

(Approved July 1, 2005.)

## ACT 181

H.B. NO. 1202

A Bill for an Act Relating to Agricultural Trespassing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that agricultural theft is a critical problem for Hawaii's farmers. Millions of dollars in agricultural products and equipment have been lost due to theft. This monetary cost is in addition to the time spent by farmers to replace stolen equipment and replant stolen products. Farmers are especially vulnerable to theft since farms are usually located on large plots of land in sparsely populated areas, and are isolated from law enforcement. Many farmers have fences and other simple barriers surrounding their property that are easily overcome by thieves and do little to deter trespassing.

The legislature finds that the current law inadequately deals with the problem of trespassing on agricultural lands.

The purpose of this Act is to deter trespassing on agricultural lands by providing that a person commits the offense of criminal trespass in the second degree if the person, without permission, enters or remains on agricultural land under certain conditions.

SECTION 2. Section 708-814, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of criminal trespass in the second degree if:

- (a) The person knowingly enters or remains unlawfully in or upon premises that are enclosed in a manner designed to exclude intruders or are fenced; ~~or~~
- (b) The person enters or remains unlawfully in or upon commercial premises or public property after a reasonable warning or request to leave by the owner or lessee of the commercial premises or public property, the owner's or lessee's authorized agent, or a police officer; provided that this paragraph shall not apply to any conduct or activity subject to regulation by the National Labor Relations Act.

For purposes of this paragraph, “reasonable warning or request” means a warning or request communicated in writing at any time within a one-year period inclusive of the date the incident occurred, which may contain but is not limited to the following information:

- (i) A warning statement advising the person that the person's presence is no longer desired on the property for a period of one year from the date of the notice, that a violation of the warning will subject the person to arrest and prosecution for trespassing pursuant to section 708-814(1)(b), and that criminal trespass in the second degree is a petty misdemeanor;
- (ii) The legal name, any aliases, and a photograph, if practicable, or a physical description including but not limited to sex, racial extraction, age, height, weight, hair color, eye color, or any other distinguishing characteristics of the person warned;
- (iii) The name of the person giving the warning along with the date and time the warning was given; and
- (iv) The signature of the person giving the warning, the signature of a witness or police officer who was present when the warning was given and, if possible, the signature of the violator~~[-];~~ or

- (c) The person enters or remains on agricultural lands without the permission of the owner of the land, the owner's agent, or the person in lawful possession of the land, and the agricultural lands:
- (i) Are fenced, enclosed, or secured in a manner designed to exclude intruders;
  - (ii) Have a sign or signs displayed on the unenclosed cultivated or uncultivated agricultural land sufficient to give notice and reading as follows: "Private Property." The sign or signs, containing letters not less than two inches in height, shall be placed along the boundary line of the land and at roads and trails entering the land in a manner and position as to be clearly noticeable from outside the boundary line; or
  - (iii) At the time of entry, have a visible presence of a crop:
    - (A) Under cultivation;
    - (B) In the process of being harvested; or
    - (C) That has been harvested."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 1, 2005.)

**ACT 182**

H.B. NO. 1201

A Bill for an Act Relating to Agricultural Theft.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that agricultural theft is a critical problem for Hawaii's farmers. Millions of dollars worth of agricultural products and equipment have been lost due to theft. This monetary cost is in addition to the man-hours that must be expended by farmers trying desperately to replace or replenish stolen products and equipment. Farmers are especially vulnerable to theft since farms generally exist on large parcels of land that are situated in sparsely populated areas and isolated from law enforcement.

To address the issue of agricultural theft, the legislature finds that the current laws relating to ownership and movement certificates for livestock and agricultural commodities should be strengthened.

The purpose of this Act is to establish that:

- (1) Possession of agricultural commodities or products without the required ownership and movement certificate, pursuant to chapter 145, Hawaii Revised Statutes, is prima facie evidence that the items are or have been stolen;
- (2) Possession of livestock without the required ownership and transportation certificate, pursuant to chapter 142, Hawaii Revised Statutes, is prima facie evidence that the livestock is or has been stolen; and
- (3) Theft of agricultural products that exceed twenty-five pounds is included within the offense of theft in the second degree.



SECTION 2. Section 708-800, Hawaii Revised Statutes, is amended by amending the definition of “agricultural equipment, supplies, or products” to read as follows:

““Agricultural equipment, supplies, or products” mean any agricultural equipment, supplies, or commercial agricultural products or commodities raised, grown, or maintained by a commercial agricultural enterprise or research agency while owned by the enterprise or agency.”

SECTION 3. Section 708-831, Hawaii Revised Statutes, is amended to read as follows:

**“§708-831 Theft in the second degree.** (1) A person commits the offense of theft in the second degree if the person commits theft:

- (a) Of property from the person of another;
- (b) Of property or services the value of which exceeds \$300;
- (c) Of an aquaculture product or part thereof from premises that is fenced or enclosed in a manner designed to exclude intruders or there is prominently displayed on the premises a sign or signs sufficient to give notice and reading as follows: “Private Property”; or
- (d) Of agricultural equipment, supplies, or products, or part thereof, the value of which exceeds \$100 but does not exceed \$20,000, or of agricultural products that exceed twenty-five pounds, from premises that are fenced, enclosed, or secured in a manner designed to exclude intruders or there is prominently displayed on the premises a sign or signs sufficient to give notice and reading as follows: “Private Property.” The sign or signs, containing letters not less than two inches in height, shall be placed along the boundary line of the land in a manner and in such position as to be clearly noticeable from outside the boundary line. Possession of agricultural products without ownership and movement certificates, when a certificate is required pursuant to chapter 145, is prima facie evidence that the products are or have been stolen.

(2) Theft in the second degree is a class C felony. A person convicted of committing the offense of theft in the second degree under [{}paragraphs{}] (c) and (d) shall be sentenced in accordance with chapter 706, except that for the first offense, the court may impose a minimum sentence of a fine of at least \$1,000 or two-fold damages sustained by the victim, whichever is greater.”

SECTION 4. Section 708-835.5, Hawaii Revised Statutes, is amended to read as follows:

**“[{}§708-835.5{}] Theft of livestock.** (1) A person commits the offense of theft of livestock if the person commits theft by having in the person’s possession a live animal of the bovine, equine, swine, or sheep species, or its carcass or meat, while in or upon premises which the person knowingly entered or remained unlawfully in or upon, and which are fenced or enclosed in a manner designed to exclude intruders, or by having in the person’s possession [such] a live animal, carcass, or meat in any other location.

~~[(2) Theft of livestock is a class C felony.]~~

(2) Possession of livestock without a livestock ownership and movement certificate, when a certificate is required pursuant to section 142-49, is prima facie evidence that the livestock is or has been stolen.

(3) Theft of livestock is a class C felony.

~~[(3)]~~ (4) A person convicted of committing the offense of theft of livestock shall be sentenced in accordance with chapter 706, except that for a first offense the court shall impose a minimum sentence of a fine of at least \$1,000 or restitution, whichever is greater.”

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved July 1, 2005.)

**ACT 183**

H.B. NO. 1640

A Bill for an Act Relating to Important Agricultural Lands.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. In 1978, voters approved article XI, section 3, of the Constitution of the State of Hawaii, which sets out the framework for state policies to promote agriculture and the conservation of productive agricultural lands in the State. Article XI, section 3, reads as follows:

The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands. The legislature shall provide standards and criteria to accomplish the foregoing.

Lands identified by the State as important agricultural lands needed to fulfill the purposes above shall not be reclassified by the State or rezoned by its political subdivisions without meeting the standards and criteria established by the legislature and approved by a two-thirds vote of the body responsible for the reclassification or rezoning action.

The legislature finds that there is a compelling need to provide standards, criteria, and mechanisms to fulfill the intent and purpose of article XI, section 3, of the state constitution and enable implementation of the constitutional mandate.

The legislature further finds that while land is the basic resource for agriculture and the supply of lands suitable for agriculture is an irreplaceable resource, the long-term viability of agriculture also depends on factors that affect the profitability of agriculture, such as:

- (1) Commodity prices;
- (2) The availability of water for irrigation;
- (3) Agricultural research and outreach;
- (4) The application of production technologies;
- (5) Marketing; and
- (6) The availability and cost of transportation services.

Hawaii’s agricultural producers face operating costs that increasingly threaten the viability of their agricultural operations and the sustainability of agriculture in Hawaii, and the legislature further finds that opportunities should be made for farmers and landowners with the ability to promote the long-term viability of agricultural use of lands.

Thus, the intent of this Act is not only to set policies for important agricultural lands and to identify important agricultural lands but also to provide for the development of incentives for agricultural viability in Hawaii, particularly for agricultural enterprises that farm important agricultural lands and for landowners of important agricultural lands. These incentives would be designed to promote the retention of important agricultural lands for viable agricultural use over the long term.

The purpose of this Act is to further implement article XI, section 3, of the state constitution by:

- (1) Establishing a new part in chapter 205, Hawaii Revised Statutes, that sets forth policies and procedures for the identification of important agricultural lands, including:
  - (A) Policies to assure the conservation and availability of important agricultural lands for long-term agricultural use;
  - (B) Standards and criteria for the identification of important agricultural lands;
  - (C) A process for the identification of important agricultural lands;
  - (D) Standards and criteria for the reclassification and rezoning of lands identified as important agricultural lands; and
  - (E) Policies for incentives for the long-term retention of important agricultural lands for agricultural use; and
- (2) Providing for a process to develop proposals for state and county incentives to promote agricultural viability, sustained growth of the agriculture industry, and the long-term use and protection of important agricultural lands for agricultural use.

## PART I

SECTION 2. Chapter 205, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

### “PART . IMPORTANT AGRICULTURAL LANDS

**§205-A Declaration of policy.** It is declared that the people of Hawaii have a substantial interest in the health and sustainability of agriculture as an industry in the State. There is a compelling state interest in conserving the State’s agricultural land resource base and assuring the long-term availability of agricultural lands for agricultural use to achieve the purposes of:

- (1) Conserving and protecting agricultural lands;
  - (2) Promoting diversified agriculture;
  - (3) Increasing agricultural self-sufficiency; and
  - (4) Assuring the availability of agriculturally suitable lands,
- pursuant to article XI, section 3, of the Hawaii State constitution.

**§205-B Important agricultural lands; definition and objectives.** (a) As used in this part, unless the context otherwise requires, “important agricultural lands” means those lands, identified pursuant to this part, that:

- (1) Are capable of producing sustained high agricultural yields when treated and managed according to accepted farming methods and technology;
- (2) Contribute to the State’s economic base and produce agricultural commodities for export or local consumption; or
- (3) Are needed to promote the expansion of agricultural activities and income for the future, even if currently not in production.

(b) The objective for the identification of important agricultural lands is to identify and plan for the maintenance of a strategic agricultural land resource base that can support a diversity of agricultural activities and opportunities that expand agricultural income and job opportunities and increase agricultural self-sufficiency for current and future generations. To achieve this objective, the State shall:

- (1) Promote agricultural development and land use planning that delineates blocks of productive agricultural land and areas of agricultural activity for protection from the encroachment of nonagricultural uses; and
- (2) Establish incentives that promote:
  - (A) Agricultural viability;
  - (B) Sustained growth of the agriculture industry; and
  - (C) The long-term agricultural use and protection of these productive agricultural lands.

**§205-C Important agricultural lands; policies.** State and county agricultural policies, tax policies, land use plans, ordinances, and rules shall promote the long-term viability of agricultural use of important agricultural lands and shall be consistent with and implement the following policies:

- (1) Promote the retention of important agricultural lands in blocks of contiguous, intact, and functional land units large enough to allow flexibility in agricultural production and management;
- (2) Discourage the fragmentation of important agricultural lands and the conversion of these lands to nonagricultural uses;
- (3) Direct nonagricultural uses and activities from important agricultural lands to other areas and ensure that uses on important agricultural lands are actually agricultural uses;
- (4) Limit physical improvements on important agricultural lands to maintain affordability of these lands for agricultural purposes;
- (5) Provide a basic level of infrastructure and services on important agricultural lands limited to the minimum necessary to support agricultural uses and activities;
- (6) Facilitate the long-term dedication of important agricultural lands for future agricultural use through the use of incentives;
- (7) Facilitate the access of farmers to important agricultural lands for long-term viable agricultural use; and
- (8) Promote the maintenance of essential agricultural infrastructure systems, including irrigation systems.

**§205-D Standards and criteria for the identification of important agricultural lands.** The standards and criteria in this section shall be used to identify important agricultural lands. Lands identified as important agricultural lands need not meet every standard and criteria listed below. Rather, lands meeting any of the criteria below shall be given initial consideration; provided that the designation of important agricultural lands shall be made by weighing the standards and criteria with each other to meet the constitutionally mandated purposes in article XI, section 3, of the state constitution and the objectives and policies for important agricultural lands in sections 205-B and 205-C. The standards and criteria shall be as follows:

- (1) Land currently used for agricultural production;
- (2) Land with soil qualities and growing conditions that support agricultural production of food, fiber, or fuel- and energy-producing crops;
- (3) Land identified under agricultural productivity rating systems, such as the agricultural lands of importance to the State of Hawaii (ALISH) system adopted by the board of agriculture on January 28, 1977;

- (4) Land types associated with traditional native Hawaiian agricultural uses, such as taro cultivation, or unique agricultural crops and uses, such as coffee, vineyards, aquaculture, and energy production;
- (5) Land with sufficient quantities of water to support viable agricultural production;
- (6) Land whose designation as important agricultural lands is consistent with general, development, and community plans of the county;
- (7) Land that contributes to maintaining a critical land mass important to agricultural operating productivity; and
- (8) Land with or near support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power.

**§205-E Petition by farmer or landowner.** (a) A farmer or landowner with lands qualifying under section 205-D may file a petition for declaratory ruling with the commission at any time in the designation process.

(b) The petition for declaratory ruling shall be submitted in accordance with subchapter 14 of the commission's rules and shall include:

- (1) Tax map keys of the land to be designated along with verification and authorization from the applicable landowners;
- (2) Proof of qualification for designation under section 205-D, respecting a regional perspective; and
- (3) The current or planned agricultural use of the area to be designated.

(c) The commission shall review the petition and the accompanying submissions to evaluate the qualifications of the land for designation as important agricultural lands in accordance with section 205-D. If the commission, after its review and evaluation, finds that the lands qualify for designation as important agricultural lands under this part, the commission shall vote, by a two-thirds majority of the members of the commission, to issue a declaratory order designating the lands as important agricultural lands.

(d) Designating important agricultural lands by the commission shall not be considered as an amendment to district boundaries under sections 205-3.1 and 205-4 or become effective prior to legislative enactment of protection and incentive measures for important agricultural land and agricultural viability, as provided in section 9 of Act \_\_\_\_\_, Session Laws of Hawaii 2005.

(e) Farmers or landowners with lands qualifying under section 205-D may file petitions for a declaratory ruling to designate lands as important agricultural lands following the legislative enactment of protection and incentive measures for important agricultural lands and agricultural viability, as provided in section 9 of Act \_\_\_\_\_, Session Laws of Hawaii 2005.

**§205-F Incentives for important agricultural lands.** (a) To achieve the long-term agricultural viability and use of important agricultural lands, the State and each county shall ensure that their:

- (1) Agricultural development, land use, water use, regulatory, tax, and land protection policies; and
- (2) Permitting and approval procedures,

enable and promote the economic sustainability of agriculture.

Agricultural operations occurring on important agricultural lands shall be eligible for incentives and protections provided by the State and counties pursuant to this section to promote the viability of agricultural enterprise on important agricultural lands and to assure the availability of important agricultural lands for long-term agricultural use.

(b) State and county incentive programs shall provide preference to important agricultural lands and agricultural businesses on important agricultural lands.

The State and each county shall cooperate in program development to prevent duplication of and to streamline and consolidate access to programs and services for agricultural businesses located on important agricultural lands.

(c) Incentive and protection programs shall be designed to provide a mutually supporting framework of programs and measures that enhance agricultural viability on important agricultural lands, including but not limited to:

- (1) Grant assistance;
- (2) Real property tax systems that support the needs of agriculture, including property tax assessments based on agricultural use valuation;
- (3) Reduced infrastructure requirements and facilitated building permit processes for dedicated agricultural structures;
- (4) Tax incentives to offset operational costs, promote agricultural business viability, and promote the long-term protection of important agricultural lands;
- (5) Agricultural business planning, marketing, and implementation grants;
- (6) Tax incentives and programs for equity investments and financing for agricultural operations, including agricultural irrigation systems;
- (7) Other programs and mechanisms that promote investment in agricultural businesses or agricultural land protection, such as the purchase of development rights;
- (8) State funding mechanisms to fund business viability and land protection programs;
- (9) Water regulations and policies that provide farmers of important agricultural lands access to adequate and cost-effective sources of water;
- (10) Other measures that would ensure that state capital investments, projects, programs, and rules are consistent with this part; and
- (11) Agricultural education and training for new farmers; upgrading the skills of existing farmers and other agriculture-related employees through the use of mentoring, business incubators, and public or private scholarships; and increasing the returns of farming by adding value to food processing and other tools and methods.

(d) State and county agencies shall review the protection and incentive measures enacted for important agricultural lands and agricultural viability pursuant to this chapter at least every five years to:

- (1) Determine their effectiveness in sustaining agriculture in Hawaii, assuring agricultural diversification, and increasing agricultural self-sufficiency;
- (2) Determine whether the effectiveness of tax credits or incentive programs will be enhanced by creating revolving funds or increasing rates based upon the tax revenues generated by enhanced investment and agricultural activities on important agricultural lands; and
- (3) Modify measures and programs as needed.

(e) This section shall apply only to those lands designated as important agricultural lands pursuant to sections 205-E and 205-I.

**§205-G Identification of important agricultural lands; county process.**

(a) Each county shall identify and map potential important agricultural lands within its jurisdiction based on the standards and criteria in section 205-D and the intent of this part, except lands that have been designated, through the state land use, zoning, or county planning process, for urban use by the State or county.

(b) Each county shall develop maps of potential lands to be considered for designation as important agricultural lands in consultation and cooperation with landowners, the department of agriculture, agricultural interest groups, including representatives from the Hawaii Farm Bureau Federation and other agricultural

organizations, the United States Department of Agriculture – Natural Resources Conservation Service, the office of planning, and other groups as necessary.

(c) Each county, through its planning department, shall develop an inclusive process for public involvement in the identification of potential lands and the development of maps of lands to be recommended as important agricultural lands, including a series of public meetings throughout the identification and mapping process. The planning departments may also establish one or more citizen advisory committees on important agricultural lands to provide further public input, utilize an existing process (such as general plan, development plan, community plan), or employ appropriate existing and adopted general plan, development plan, or community plan maps.

(d) The counties shall take notice of those lands that have already been designated as important agricultural lands by the commission.

Upon identification of potential lands to be recommended to the county council as potential important agricultural lands, the counties shall take reasonable action to notify each owner of those lands by mail or posted notice on the affected lands to inform them of the potential designation of their lands.

In formulating its final recommendations to the respective county councils, the planning departments shall report on the manner in which the important agricultural lands mapping relates to, supports, and is consistent with the:

- (1) Standards and criteria set forth in section 205-D;
- (2) County's adopted land use plans, as applied to both the identification and exclusion of important agricultural lands from such designation;
- (3) Comments received from government agencies and others identified in subsection (b);
- (4) Viability of existing agribusinesses; and
- (5) Representations or position statements of the owners whose lands are subject to the potential designation.

(e) The important agricultural lands maps shall be submitted to the county council for decision-making. The county council shall adopt the maps, with or without changes, by resolution. The adopted maps shall be transmitted to the land use commission for further action pursuant to section 205-H.

**§205-H Receipt of maps of eligible important agricultural lands; land use commission.** (a) The land use commission shall receive the county recommendations and maps delineating those lands eligible to be designated important agricultural lands no sooner than the effective date of the legislative enactment of protection and incentive measures for important agricultural lands and agricultural viability, as provided in section 9 of Act \_\_\_\_\_, Session Laws of Hawaii 2005.

(b) The department of agriculture and the office of planning shall review the county report and recommendations and provide comments to the land use commission within forty-five days of the receipt of the report and maps by the land use commission. The land use commission may also consult with the department of agriculture and the office of planning as needed.

- (c) State agency review shall be based on an evaluation of the degree that the:
- (1) County recommendations result in an identified resource base that meets the definition of important agricultural land and the objectives and policies for important agricultural lands in sections 205-B and 205-C; and
  - (2) County has met the minimum standards and criteria for the identification and mapping process in sections 205-D and 205-G.

**§205-I Designation of important agricultural lands; adoption of important agricultural lands maps.** (a) After receipt of the maps of eligible important

agricultural lands from the counties and the recommendations of the department of agriculture and the office of planning, the commission shall then proceed to identify and designate important agricultural lands, subject to section 205-E. The decision shall consider the county maps of eligible important agricultural lands; declaratory orders issued by the commission designating important agricultural lands during the three year period following the enactment of legislation establishing incentives and protections contemplated under section 205-F, as provided in section 9 of Act \_\_\_\_\_, Session Laws of Hawaii 2005; landowner position statements and representations; and any other relevant information.

In designating important agricultural lands in the State, pursuant to the recommendations of individual counties, the commission shall consider the extent to which:

- (1) The proposed lands meet the standards and criteria under section 205-D;
- (2) The proposed designation is necessary to meet the objectives and policies for important agricultural lands in sections 205-B and 205-C; and
- (3) The commission has designated lands as important agricultural lands, pursuant to section 205-E; provided that if the majority of landowners' landholdings is already designated as important agricultural lands, excluding lands held in the conservation district, pursuant to section 205-E or any other provision of this part, the commission shall not designate any additional lands of that landowner as important agricultural lands except by a petition pursuant to section 205-E.

Any decision regarding the designation of lands as important agricultural lands and the adoption of maps of those lands pursuant to this section shall be based upon written findings of fact and conclusions of law, presented in at least one public hearing conducted in the county where the land is located in accordance with chapter 91, that the subject lands meet the standards and criteria set forth in section 205-D and shall be approved by two-thirds of the membership to which the commission is entitled.

(b) Copies of the maps of important agricultural lands adopted under this section shall be transmitted to each county planning department and county council, the department of agriculture, the agribusiness development corporation, the office of planning, and other state agencies involved in land use matters. The maps of important agricultural lands shall guide all decision-making on the proposed reclassification or rezoning of important agricultural lands, state agricultural development programs, and other state and county land use planning and decision-making.

(c) The land use commission shall have the sole authority to interpret the adopted map boundaries delineating the important agricultural lands.

(d) The land use commission may designate lands as important agricultural lands and adopt maps for a designation pursuant to:

- (1) A farmer or landowner petition for declaratory ruling under section 205-E at any time; or
- (2) The county process for identifying and recommending lands for important agricultural lands under section 205-G no sooner than three years,

after the enactment of legislation establishing incentives and protections contemplated under section 205-F, as provided in section 9 of Act \_\_\_\_\_, Session Laws of Hawaii 2005.

**§205-J Standards and criteria for the reclassification or rezoning of important agricultural lands.** (a) Any land use district boundary amendment or change in zoning involving important agricultural lands identified pursuant to this chapter shall be subject to this section.



(b) Upon acceptance by the county for processing, any application for a special permit involving important agricultural lands shall be referred to the department of agriculture and the office of planning for review and comment.

(c) Any decision by the land use commission or county pursuant to this section shall specifically consider the following standards and criteria:

- (1) The relative importance of the land for agriculture based on the stock of similarly suited lands in the area and the State as a whole;
- (2) The proposed district boundary amendment or zone change will not harm the productivity or viability of existing agricultural activity in the area, or adversely affect the viability of other agricultural activities or operations that share infrastructure, processing, marketing, or other production-related costs or facilities with the agricultural activities on the land in question;
- (3) The district boundary amendment or zone change will not cause the fragmentation of or intrusion of nonagricultural uses into largely intact areas of lands identified by the State as important agricultural lands that create residual parcels of a size that would preclude viable agricultural use;
- (4) The public benefit to be derived from the proposed action is justified by a need for additional lands for nonagricultural purposes; and
- (5) The impact of the proposed district boundary amendment or zone change on the necessity and capacity of state and county agencies to provide and support additional agricultural infrastructure or services in the area.

(d) Any decision pursuant to this section shall be based upon a determination that:

- (1) On balance, the public benefit from the proposed district boundary amendment or zone change outweighs the benefits of retaining the land for agricultural purposes; and
- (2) The proposed action will have no significant impact upon the viability of agricultural operations on adjacent agricultural lands.

(e) The standards and criteria of this section shall be in addition to:

- (1) The decision-making criteria of section 205-17 governing decisions of the land use commission under this chapter; and
- (2) The decision-making criteria adopted by each county to govern decisions of county decision-making authorities under this chapter.

(f) Any decision of the land use commission and any decision of any county on a land use district boundary amendment or change in zoning involving important agricultural lands shall be approved by the body responsible for the decision by a two-thirds vote of the membership to which the body is entitled.

(g) A farmer or landowner with qualifying lands may also petition the land use commission to remove the "important agricultural lands" designation from lands if a sufficient supply of water is no longer available to allow profitable farming of the land due to governmental actions, acts of God, or other causes beyond the farmer's or landowner's reasonable control.

**§205-K Important agricultural lands; county ordinances.** (a) Each county shall adopt ordinances that reduce infrastructure standards for important agricultural lands no later than the effective date of the legislative enactment of protection and incentive measures for important agricultural lands and agricultural viability, as provided in section 9 of Act \_\_\_\_\_, Session Laws of Hawaii 2005.

(b) For counties without ordinances adopted pursuant to subsection (a), important agricultural lands designated pursuant to this part may be subdivided without county processing or standards; provided that:

- (1) None of the resulting lots shall be used solely for residential occupancy; and
- (2) The leasehold lots shall return to the original lot of record upon expiration or termination of the lease.

**§205-L Periodic review and amendment of important agricultural lands maps.** The maps delineating important agricultural lands shall be reviewed in conjunction with the county general plan and community and development plan revision process, or at least once every ten years following the adoption of the maps by the land use commission; provided that the maps shall not be reviewed more than once every five years. Any review and amendment of the maps of important agricultural lands shall be conducted in accordance with this part. In these periodic reviews or petitions by the farmers or landowners for declaratory rulings, the "important agricultural lands" designation shall be removed from those important agricultural lands where the commission has issued a declaratory order that a sufficient supply of water is no longer available to allow profitable farming of these lands due to governmental actions, acts of God, or other causes beyond the farmer's or landowner's reasonable control."

## PART II

SECTION 3. Section 205-3.1, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

"(a) District boundary amendments involving lands in the conservation district, land areas greater than fifteen acres, or lands delineated as important agricultural lands shall be processed by the land use commission pursuant to section 205-4.

(b) Any department or agency of the State, and department or agency of the county in which the land is situated, or any person with a property interest in the land sought to be reclassified may petition the appropriate county land use decision-making authority of the county in which the land is situated for a change in the boundary of a district involving lands less than fifteen acres presently in the [agricultural,] rural[,] and urban districts[,] and lands less than fifteen acres in the agricultural district that are not designated as important agricultural lands.

(c) District boundary amendments involving land areas of fifteen acres or less, except ~~[in conservation districts,]~~ as provided in subsection (b), shall be determined by the appropriate county land use decision-making authority for [said] the district and shall not require consideration by the land use commission pursuant to section 205-4[- District boundary amendments involving land areas of fifteen acres or less in conservation districts shall be processed by the land use commission pursuant to section 205-4.]; provided that such boundary amendments and approved uses are consistent with this chapter. The appropriate county land use decision-making authority may consolidate proceedings to amend state land use district boundaries pursuant to this subsection, with county proceedings to amend the general plan, development plan, zoning of the affected land, or such other proceedings. Appropriate ordinances and rules to allow consolidation of such proceedings may be developed by the county land use decision-making authority."

SECTION 4. Section 205-4, Hawaii Revised Statutes, is amended as follows:  
1. By amending subsection (a) to read:

"(a) Any department or agency of the State, any department or agency of the county in which the land is situated, or any person with a property interest in the land sought to be reclassified, may petition the land use commission for a change in the

boundary of a district. This section applies to all petitions for changes in district boundaries of lands within conservation districts, lands designated or sought to be designated as important agricultural lands, and ~~[all petitions for changes in district boundaries involving]~~ lands greater than fifteen acres in the agricultural, rural, and urban districts, except as provided in section 201G-118. The land use commission shall adopt rules pursuant to chapter 91 to implement section 201G-118.”

2. By amending subsection (h) to read:

“(h) No amendment of a land use district boundary shall be approved unless the commission finds upon the clear preponderance of the evidence that the proposed boundary is reasonable, not violative of section 205-2 and part of this chapter, and consistent with the policies and criteria established pursuant to sections 205-16 and 205-17. Six affirmative votes of the commission shall be necessary for any boundary amendment under this section.”

SECTION 5. Section 205-6, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) ~~[The]~~ Subject to this section, the county planning commission may permit certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified. Any person who desires to use the person’s land within an agricultural or rural district other than for an agricultural or rural use, as the case may be, may petition the planning commission of the county within which the person’s land is located for permission to use the person’s land in the manner desired. Each county may establish the appropriate fee for processing the special permit petition. Copies of the special permit petition shall be forwarded to the land use commission, the office of planning, and the department of agriculture for their review and comment.”

2. By amending subsections (c), (d), and (e) to read:

“(c) The county planning commission may, under such protective restrictions as may be deemed necessary, permit the desired use, but only when the use would promote the effectiveness and objectives of this chapter~~[-]~~; provided that a use proposed for designated important agricultural lands shall not conflict with any part of this chapter. A decision in favor of the applicant shall require a majority vote of the total membership of the county planning commission.

(d) Special permits for land the area of which is greater than fifteen acres or for lands designated as important agricultural lands shall be subject to approval by the land use commission. The land use commission may impose additional restrictions as may be necessary or appropriate in granting [such] the approval, including the adherence to representations made by the applicant.

(e) A copy of the decision, together with the complete record of the proceeding before the county planning commission on all special permit requests involving a land area greater than fifteen acres or for lands designated as important agricultural lands, shall be transmitted to the land use commission within sixty days after the decision is rendered.

Within forty-five days after receipt of the complete record from the county planning commission, the land use commission shall act to approve, approve with modification, or deny the petition. A denial either by the county planning commission or by the land use commission, or a modification by the land use commission, as the case may be, of the desired use shall be appealable to the circuit court of the circuit in which the land is situated and shall be made pursuant to the Hawaii rules of civil procedure.”

SECTION 6. Section 205-17, Hawaii Revised Statutes, is amended to read as follows:

**“§205-17 Land use commission decision-making criteria.** In its review of any petition for reclassification of district boundaries pursuant to this chapter, the commission shall specifically consider the following:

- (1) The extent to which the proposed reclassification conforms to the applicable goals, objectives, and policies of the Hawaii state plan and relates to the applicable priority guidelines of the Hawaii state plan and the adopted functional plans;
- (2) The extent to which the proposed reclassification conforms to the applicable district standards; ~~and~~
- (3) The impact of the proposed reclassification on the following areas of state concern:
  - (A) Preservation or maintenance of important natural systems or habitats;
  - (B) Maintenance of valued cultural, historical, or natural resources;
  - (C) Maintenance of other natural resources relevant to Hawaii's economy, including ~~[-, but not limited to,]~~ agricultural resources;
  - (D) Commitment of state funds and resources;
  - (E) Provision for employment opportunities and economic development; and
  - (F) Provision for housing opportunities for all income groups, particularly the low, low-moderate, and gap groups; ~~and~~
- (4) The standards and criteria for the reclassification or rezoning of important agricultural lands in section 205-J; and
- ~~(4)~~ (5) The representations and commitments made by the petitioner in securing a boundary change.”

SECTION 7. Each county shall submit its report and maps with recommendations for lands eligible for designation as important agricultural lands to the land use commission no later than sixty months from the date of county receipt of state funds appropriated for the identification process. Upon receipt of the county maps, the land use commission shall review and adopt maps designating important agricultural lands to the State in accordance with section 205-I.

SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of \$75,000, or so much thereof as may be necessary for fiscal year 2005-2006, for grants-in-aid to the counties for the identification and mapping of important agricultural lands pursuant to section 2 of this Act.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the disbursement of funds by the land use commission to each county for the identification of important agricultural lands pursuant to this Act.

The land use commission shall submit annual reports on the progress of the counties in identifying and mapping important agricultural lands to the legislature no later than twenty days before the convening of the regular sessions of 2006 through 2009.

### PART III

SECTION 9. (a) It is the intent of this Act:

- (1) That agricultural incentive programs to promote agricultural viability, sustained growth of the agricultural industry, and the long-term use and

protection of important agricultural lands for agricultural use shall be developed concurrently with the process of identifying important agricultural lands as required under section 2 of this Act; and

- (2) That the designation of important agricultural lands and adoption of maps by the land use commission pursuant to section 2 of this Act shall take effect only upon the enactment of legislation establishing incentives and protections for important agricultural lands contemplated by section 205-F and shall be satisfied by:
  - (A) Providing a declaration of satisfaction within the Act that establishes incentives for important agricultural lands; or
  - (B) Having the legislature adopt a concurrent resolution declaring the satisfaction of implementing incentives for important agricultural lands by identifying the specific measures or Acts that establish incentives for important agricultural lands.

(b) Pursuant to section 205-F, Hawaii Revised Statutes, the department of agriculture, with the assistance of the department of taxation, shall contract appropriate meeting facilitation and cost-benefit analysis services to develop and recommend a package of proposals for agricultural incentives and other measures that promote agricultural viability, sustained growth of the agricultural industry, and the long-term use and protection of important agricultural lands.

The department of agriculture, in consultation with the department of taxation, shall use consultants to promote a facilitated meeting process and deliberation and seek the assistance and input from the Hawaii Farm Bureau Federation, landowners, affected state and county agencies, other stakeholders, and persons with relevant expertise that are necessary to develop and implement a comprehensive and integrated framework of incentives and programs that will promote agricultural viability, sustained growth of the agricultural industry, and the long-term use and protection of important agricultural lands for agricultural use in Hawaii, including tax policy, agricultural business development and financing, marketing, and agricultural land use techniques. The meeting facilitators shall ensure that stakeholder discussions are inclusive and use a consistent voting procedure.

The department of agriculture shall report stakeholder findings and recommendations, including proposed legislation and a recommended minimum criteria for determining when the "enactment of legislation establishing incentives and protection" has occurred for the purposes of this Act, to the legislature no later than twenty days before the convening of the regular session of 2007. The report shall include an analysis of the impacts and benefits of its recommendations, a record of the stakeholder group's process and deliberations, and shall provide the supporting rationale for the incentives being proposed.

(c) Incentives and other programs to promote agricultural viability, sustained growth of the agricultural industry, and the long-term use and protection of important agricultural lands for agricultural use in Hawaii by farmers and landowners to be considered by the department of agriculture shall include but not be limited to the following:

- (1) Assistance in identifying federal, state, and private grant and loan resources for agricultural business planning and operations, assistance with grant and loan application processes, and the processing of grants and loans;
- (2) Real property tax systems that support the needs of agriculture, including property tax assessment of land and improvements used or held only for use in agriculture based on agricultural use value rather than fair market value;
- (3) Reduced infrastructure requirements and facilitated building permit processes for the construction of dedicated agricultural structures;

- (4) Tax incentives that include but are not limited to:
  - (A) Tax credits for the sale or donation of agricultural easements on important agricultural lands; and
  - (B) General excise tax exemption for retail sales of farm produce;
- (5) Incentives that promote investment in agricultural businesses or value-added agricultural development, and other agricultural financing mechanisms;
- (6) Incentives and programs that promote long-term or permanent agricultural land protection, and the establishment of a dedicated funding source for these programs;
- (7) Establishment of a permanent state revolving fund, escalating tax credits based on the tax revenues generated by increased investment or agricultural activities conducted on important agricultural lands, and dedicated funding sources to provide moneys for incentives and other programs;
- (8) Establishment of a means to analyze the conformity of state-funded projects with the intent and purposes of part I of this Act, and a mechanism for mitigation measures when projects are not in conformance;
- (9) Institution of a requirement for the preparation of an agricultural impact statement that would include mitigation measures for adverse impacts for proposed state or county rulemaking that may affect agricultural activities, operations, and agricultural businesses on important agricultural lands; and
- (10) Other programs to carry out the intent of part I of this Act.

**SECTION 10.** Within one year of the adoption of maps of important agricultural lands by the land use commission for the lands within the jurisdiction of each county, all state agencies shall report to the department of agriculture on the impact of projects and programs on the designated important agricultural lands and sustained agricultural use of these lands. State agencies shall develop implementation programs, as needed, to ensure that their programs are supportive of agriculture and consistent with the intent and purposes of this Act.

**SECTION 11.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$75,000, or so much thereof as may be necessary for fiscal year 2005-2006, for the development of proposals for incentives and other programs for agricultural development and agricultural land protection pursuant to section 9 of this Act; provided that any unexpended or unencumbered funds at the close of fiscal year 2005-2006 may be expended or encumbered during fiscal year 2006-2007 and shall not lapse until June 30, 2007.

The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.

#### **PART IV**

**SECTION 12.** In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

**SECTION 13.** Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

**SECTION 14.** This Act shall take effect on July 1, 2005; provided that designations made pursuant to:

- (1) Section 205-E shall take effect at any time; and
  - (2) Section 205-G shall take effect three years,
- after the enactment of legislation establishing incentives and protections for important agricultural lands and agricultural viability, as provided in section 9 of this Act.

(Approved July 1, 2005.)

## ACT 184

S.B. NO. 617

A Bill for an Act Relating to Court Interpreter Services.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 607, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§607- Court interpreting services revolving fund.** (a) There is established in the state treasury the court interpreting services revolving fund, into which shall be deposited:

- (1) Fees, charges, and other moneys collected for programs relating to interpreter issues and training, screening, testing, and certification of court interpreters;
- (2) All moneys received from public or private sources for the purposes of this fund; and
- (3) Any interest accrued or investment earnings realized that are attributable to the moneys in the revolving fund.

(b) Moneys in the court interpreting services revolving fund shall be administered and expended by the administrative director of the courts to support the court interpreting services program’s educational services and the program’s activities relating to the training, screening, testing, and certification of court interpreters.”

SECTION 2. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

**“§36-27 Transfers from special funds for central service expenses.** Except as provided in this section, and notwithstanding any other law to the contrary, from time to time, the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special out-of-school time instructional program fund under section 302A-1310;
- (2) School cafeteria special funds of the department of education;
- (3) Special funds of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center enterprise special fund under section 201B-8;
- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing project bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Funds of the employees’ retirement system created by section 88-109;
- (11) Unemployment compensation fund established under section 383-121;
- (12) Hawaii hurricane relief fund established under chapter 431P;
- (13) Hawaii health systems corporation special funds;

- (14) Tourism special fund established under section 201B-11;
- (15) Universal service fund established under chapter 269;
- (16) Integrated tax information management systems special fund under section 231-3.2;
- (17) Emergency and budget reserve fund under section 328L-3;
- (18) Public schools special fees and charges fund under section 302A-1130(f);
- (19) Sport fish special fund under section 187A-9.5;
- (20) Neurotrauma special fund under section 321H-4;
- (21) Deposit beverage container deposit special fund under section 342G-104;
- (22) Glass advance disposal fee special fund established by section 342G-82;
- (23) Center for nursing special fund under section 304D-5;
- (24) Passenger facility charge special fund established by section 261-5.5;

[and] Solicitation of funds for charitable purposes special fund established by section 467B-15[.]; and

(26) Court interpreting services revolving fund,

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year.”

SECTION 3. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) Each special fund, except the:
- (1) Transportation use special fund established by section 261D-1;
  - (2) Special out-of-school time instructional program fund under section 302A-1310;
  - (3) School cafeteria special funds of the department of education;
  - (4) Special funds of the University of Hawaii;
  - (5) State educational facilities improvement special fund;
  - (6) Special funds established by section 206E-6;
  - (7) Aloha Tower fund created by section 206J-17;
  - (8) Funds of the employees’ retirement system created by section 88-109;
  - (9) Unemployment compensation fund established under section 383-121;
  - (10) Hawaii hurricane relief fund established under chapter 431P;
  - (11) Convention center enterprise special fund established under section 201B-8;
  - (12) Hawaii health systems corporation special funds;
  - (13) Tourism special fund established under section 201B-11;
  - (14) Universal service fund established under chapter 269;
  - (15) Integrated tax information management systems special fund under section 231-3.2;
  - (16) Emergency and budget reserve fund under section 328L-3;
  - (17) Public schools special fees and charges fund under section 302A-1130(f);
  - (18) Sport fish special fund under section 187A-9.5;
  - (19) Neurotrauma special fund under section 321H-4;
  - (20) Center for nursing special fund under section 304D-5; [and]



- (21) Passenger facility charge special fund established by section 261-5.5;  
and  
 (22) Court interpreting services revolving fund;  
 shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned.”

SECTION 4. There is appropriated out of the court interpreting services revolving fund the sum of \$100,000, or so much thereof as may be necessary for fiscal year 2005-2006, and the sum of \$100,000, or so much thereof as may be necessary for fiscal year 2006-2007, for the purposes of the court interpreting services program’s educational services and the program’s activities related to the training, screening, testing, and certification of court interpreters.

The sums appropriated shall be expended by the judiciary for the purposes of this Act.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect on July 1, 2005.

(Approved July 1, 2005.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 185**

S.B. NO. 1876

A Bill for an Act Relating to Highways.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Hawaii’s rural communities are the heart and soul of the islands, reflecting the aloha spirit and natural beauty that are the essence of our State. As urbanization spreads throughout Hawaii, our rural communities are at risk of losing their unique identities. The imposition of uniform, conventional highway design can significantly alter and detract from the historical identities of these communities.

During the past decade, highway design has undergone significant change. Today, engineers and planners are employing greater flexibility in the way they design road projects through context-sensitive solutions and design. Through the use of the Federal Highway Administration *Flexibility in Highway Design* book, and the American Association of State Highway and Transportation Officials *Green Book*, and *A Guide for Achieving Flexibility in Highway Design* (May 2004), engineers and planners are able to consider more than safety and efficiency when building new roads or reconstructing old roads. These additional design considerations include the environment, scenic and historic preservation, community effects, and aesthetics.

Congress expressly acknowledged the importance of flexible highway design sensitive to the surrounding environment, especially in historic and scenic areas. Section 1016(a) of the Intermodal Surface Transportation Efficiency Act of 1991 allows approval of projects designed to allow for historic and scenic value preservation, while ensuring safe use. Highway design under the National Highway System Act (other than interstates) may consider the constructed and natural environment of the area, and the environmental, scenic, aesthetic, historic, community, and preservation impacts of the project. The National Highway System Act authorizes states the

flexibility to develop and apply criteria they deem appropriate for federal-aid projects not on the National Highway System. This federal policy framework recommends early identification of critical project issues and encourages thorough consideration of community concerns and input prior to any major decision that could limit other options.

Despite the flexibility under the Federal Highway Administration, American Association of State Highway and Transportation Officials, and federal law, Hawaii's state department of transportation (DOT) has been reluctant to develop and implement flexible design processes and guidelines that consider historical, scenic, and environmental impacts in highway construction.

The legislature adopts the concept of flexible highway design and determines as a matter of policy that the department should address these concerns by developing guidelines that:

- (1) Create a process to weigh community traditions, values, and practices, and environmental, aesthetic, and social impact with safety, financial, political, social, and economic policy considerations including the department's own institutional experience, cost benefit analysis, and relevant studies;
- (2) Lead to an overall highway design choice that is "reasonable", reflects sound and accepted engineering practices, provides a consistent driving experience, and includes reasonable notice to highway users;
- (3) Recognize the variety of conditions that different projects may present;
- (4) Require documentation of the process and reasoning leading to the flexible design decision, including the circumstances of each project, the choices available, and the considerations reviewed, as well as a complete explanation for the decision itself; and
- (5) Incorporate qualitative and safety studies where advisable.

The legislature expressly finds that flexible designs are not themselves less safe than earlier engineering practices. Rather, flexible design is simply part of the ongoing evolution within engineering that takes a broader range of considerations into account than may have been done in the past. Flexible design is not inherently less safe than some different or prior design; flexible design is a different and broader combination of factors to be considered in being safe.

To this end, the legislature determines as a matter of policy that when the government chooses to use flexibility in highway design, no legal claims or causes of action should be made against the State, DOT, the counties, and officers, employees, or agents of the State, DOT, the counties, or a public utility regulated under chapter 269 that places its facilities within the highway right of way, for the decision to select or apply flexible highway design.

The legislature further finds that community organizations, including the Alliance for the Heritage of East Maui, the Hanalei Road Committee on Kauai, and the Hamakua-Honokaa Heritage Corridor on the Big Island have been working on and support scenic byway or heritage corridor programs. The upper Kona road on the Big Island and Ka Iwi coastal highway on Oahu are also under review as important scenic and historic corridors. These groups support flexible design in highway construction to meet their community's desire to protect and preserve natural, cultural, historic, and scenic values and resources.

This Act also provides for a limitation of liability for government entities by providing immunity for the decision whether to use flexible alternatives when a flexible alternative design guideline is selected in accordance with this Act and does not extend to subsequent improper design, construction, maintenance, or improvements.

Public utilities are also protected against liability for the decision to apply flexibility in highway design. For example, if the decision to utilize a specific alternative standard requires the use of a particular type of utility pole and precludes the use of another type, the utility would not be liable for use of the required pole.

This immunity similarly applies only to the selection or application of a flexible highway design and does not relieve the utility from its subsequent responsibility of safe design, construction, and maintenance.

The purpose of this Act is to encourage flexibility in highway design that ensures that road and bridge projects adequately meet the State's transportation needs, exist in harmony with their surroundings, are safe and cost-effective, and add value to the communities they serve.

SECTION 2. Chapter 264, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§264- Flexibility in highway design; liability of State, counties, and public utilities.** (a) If a highway, including any bridge, principal and minor arterial road, collector and local road, or street, requires new construction, reconstruction, preservation, resurfacing (except for maintenance surfacing), restoration, or rehabilitation, the department of transportation with regard to a state highway, or a county with regard to a county highway, may select or apply flexible highway design guidelines consistent with practices used by the Federal Highway Administration and the American Association of State Highway and Transportation Officials. Flexibility in highway design shall consider, among other factors:

- (1) Safety, durability, and economy of maintenance;
- (2) The constructed and natural environment of the area;
- (3) Community development plans and relevant county ordinances;
- (4) Sites listed on the State or National Register of Historic Places;
- (5) The environmental, scenic, aesthetic, historic, community, and preservation impacts of the activity;
- (6) Access for other modes of transportation, including but not limited to bicycle and pedestrian transportation;
- (7) Access to and integration of sites deemed culturally and historically significant to the communities affected;
- (8) Acceptable engineering practices and standards; and
- (9) Safety studies and other pertinent research.

(b) Any other law to the contrary notwithstanding, the following parties shall be immune from liability for personal injury, death, or property damage in any accident arising out of the decision to elect or apply flexibility in highway design pursuant to this section and consistent with the practices used by the Federal Highway Administration and the American Association of State Highway and Transportation Officials:

- (1) The State;
- (2) The department of transportation;
- (3) The counties;
- (4) Any public utility regulated under chapter 269 that places its facilities within the highway right of way; or
- (5) Any officer, employee, or agent of an entity listed in paragraphs (1) to (4).

(c) The immunity from liability provided in subsection (b) applies only to the decision to select or apply flexibility in highway design pursuant to this section and does not extend to design, construction, repair, correction, or maintenance inconsistent with subsection (a).”

SECTION 3. (a) Before June 30, 2006, the director of transportation shall establish flexible highway design guidelines to govern new construction, reconstruction, preservation, resurfacing (except for maintenance surfacing), restoration, or rehabilitation of bridges, principal and minor arterial roads, collector and local

roads, and streets. The guidelines shall include and address the considerations set forth in section 2 of this Act.

The guidelines shall also provide for documentation of the facts, circumstances, and considerations involved in the flexible design decision, including an explanation of the process and the reasoning that led to the decision.

(b) The director shall establish a process to allow flexible highway design to be considered when designing improvements on the following highways:

- (1) Hana highway, east Maui;
- (2) Hanalei road, north Kauai;
- (3) Hamakua-Honokaa heritage corridor, island of Hawaii;
- (4) Upper Kona road, island of Hawaii; and
- (5) Ka Iwi coastal highway, eastern Oahu.

(c) In establishing the guidelines described under this section, the director shall solicit and consider the views of organizations and elected officials, including but not limited to:

- (1) Those with expertise in:
  - (A) Environmental protection;
  - (B) Historic preservation;
  - (C) Scenic conservation; and
  - (D) Bicycle and pedestrian transportation;
- (2) Community planning organizations;
- (3) The State historic preservation office of the department of land and natural resources; and
- (4) The Federal Highway Administration.

SECTION 4. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on July 1, 2005.

(Approved July 1, 2005.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 186**

H.B. NO. 1295

A Bill for an Act Relating to Schools.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Asbestos was commonly used in insulation and fireproofing material until it was banned in the 1970s. Asbestos does not pose a risk in finished products if left undamaged and undisturbed. However, it can pose a risk when the materials in which it is used are ground or pulverized, causing the asbestos to become airborne.

Because most of the data on asbestos-related illnesses comes from shipyard workers and miners who were exposed to large amounts of pure asbestos over long periods of time, it is unclear what effect, if any, a brief exposure to asbestos will have and what future health problems, if any, individuals may have when dust containing asbestos is inhaled.

Asbestos is found in many school buildings in Hawaii. Asbestos can present a health and safety issue for students, teachers, and anyone else present when asbestos is disturbed. While schools across the county have asbestos management plans requiring schools to inspect for asbestos and do periodic surveillance, most

school management plans do not cover the exteriors of buildings. Thus, there was an unfortunate incident at Governor Samuel Wilder King intermediate school in December 2004, when students were exposed to dust containing asbestos during an exterior renovation project that was conducted at the school.

The legislature finds that the department of education must ensure that paint and buildings are tested for asbestos prior to any renovations or painting of school facilities.

The purpose of this Act is to ensure the health of students, faculty, and visitors by requiring asbestos testing prior to any exterior or interior renovations or painting of school facilities at all department of education schools, except charter schools, provided that the surfaces have not previously been tested.

**SECTION 2.** The department of education shall be responsible for ensuring that asbestos testing is conducted prior to any exterior or interior renovations or painting of school facilities at all department of education schools, except charter schools, provided that the surfaces have not previously been tested.

**SECTION 3.** This Act shall take effect on July 1, 2005.

(Approved July 1, 2005.)

## ACT 187

H.B. NO. 1709

A Bill for an Act Relating to Criminal Property Damage.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** Chapter 708, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§708- Aggravated criminal property damage.** (1) A person commits the offense of aggravated criminal property damage if the person:

- (a) Intentionally damages the property of another without the other’s consent; and
- (b) Has been convicted two or more times of an offense under section 708-822 or 708-823 in the preceding five years.

(2) For purposes of this section, “convicted two or more times” means that, at the time of the instant offense, the person had previously entered a plea of guilty or no contest or a judge or jury had previously returned a verdict of guilty against the person for two or more offenses committed on separate occasions.

(3) Aggravated criminal property damage is a misdemeanor.”

**SECTION 2.** This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

**SECTION 3.** New statutory material is underscored.<sup>1</sup>

**SECTION 4.** This Act shall take effect upon its approval.

(Approved July 5, 2005.)

### Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Counties.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 445-113, Hawaii Revised Statutes, is amended to read as follows:

“**§445-113 Regulation by counties.** Except for outdoor advertising devices authorized under section 445-112(16) and (17), the several counties may adopt ordinances regulating billboards and outdoor advertising devices not prohibited by sections 445-111 to 445-121. The ordinances may:

- (1) Classify billboards and outdoor advertising devices in the classes set forth in section 445-112, or in any other reasonable manner of classification;
- (2) Regulate the size, manner of construction, color, illumination, location, and appearance of any class of billboard or outdoor advertising device;
- (3) Prohibit the erection or maintenance of any [class] type of billboard or the displaying of any outdoor advertising device in particular parts, or in all parts, of the county[.]; provided that the prohibition shall not apply to any official notice or sign described in section 445-112(1); and provided further that, unless a county ordinance specifies otherwise, the prohibition shall extend to billboards or outdoor advertising devices located in the airspace or waters beyond the boundaries of the county that are visible from any public highway, park, or other public place located within the county;
- (4) Control and license the business of making, erecting, posting, renting, and maintaining outdoor advertising devices and billboards as a business providing advertising for others, and require each person engaging in such business to obtain an annual license, the fee for which shall not exceed \$100. The license shall be conditioned upon the maintenance of all outdoor advertising devices and billboards in a safe state, and the observance of sections 445-111 to 445-121 and all applicable ordinances and shall be revocable by the licensing authority upon breach of such condition;
- (5) Require that no person, whether licensed under paragraph (4) or not, shall erect or maintain any billboard unless it is licensed by a permit issued by the county, the issuance of which permit shall be conditioned upon compliance with this chapter and all applicable ordinances and the payment to the county of an annual fee not to exceed \$25 per billboard; and
- (6) Provide for such other regulation of billboards and outdoor advertising devices as will promote the public health, welfare, safety, and convenience; encourage and promote the tourist and visitor trade; conserve and develop the natural beauty of the State, as well as objects and places of historic and cultural interest; foster sightliness and physical good order; and promote the purposes and provisions of sections 445-111 to 445-121.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 5, 2005.)

**ACT 189**

S.B. NO. 1660

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§302A- Education design and construction project assessment fund.**

(a) There shall be established in the department a revolving fund to be known as the education design and construction project assessment fund for the purpose of defraying the costs of:

- (1) Carrying out construction projects managed by the department;
- (2) Managing funds representing accumulated vacation and sick leave credits and retirement benefits for non-general fund employees in the construction program in accordance with section 78-23;
- (3) Equitably collecting and distributing moneys for other current expenses associated with capital improvement, repairs and maintenance, and repairs and alterations projects; and
- (4) Managing payments for employee transportation requirements such as car mileage reimbursements in accordance with applicable law and collective bargaining agreements.

(b) The superintendent shall assess construction projects managed by the department based on the superintendent’s evaluation of the costs of services for capital improvements, repairs and maintenance, and repairs and alterations projects. All assessments collected shall be deposited into the education design and construction project assessment fund.

(c) All expenditures from the education design and construction project assessment fund shall be made by the superintendent in accordance with applicable law and rules.”

SECTION 2. Section 36-32, Hawaii Revised Statutes, is amended to read as follows:

**“§36-32 State educational facilities improvement special fund.** (a) There is created in the treasury of the State the state educational facilities improvement special fund, into which shall be deposited a portion of all general excise tax revenues collected by the department of taxation under section 237-31. The special fund shall be used solely to plan, design, acquire lands for and to construct public school facilities and to provide equipment and technology infrastructure to improve public schools and other facilities under the jurisdiction of the department of education, except public libraries. In addition, activities of the department of education intended to eliminate the gap between the facility needs of schools and available resources shall be eligible for funding from the special fund. Expenditures from the special fund shall be limited to projects authorized by the legislature and shall be subject to sections 37-31, and 37-33 through 37-40. Appropriations or authorizations from the special fund shall be expended by the ~~comptroller~~ superintendent of education.

(b) The department of [~~accounting and general services~~] education shall submit an annual report to the legislature[~~, which~~] that shall include a financial statement of the special fund and the status of projects undertaken pursuant to this section, no later than twenty days prior to the convening of each regular session.”

SECTION 3. Section 36-35, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is created in the state general fund under [~~EDN 100 (school based budgeting)~~] EDN 400 (school support) the state educational facilities repair and maintenance account, into which shall be deposited legislative appropriations to the account designated for use solely to eliminate the backlog of school repair and maintenance projects, including the repair or replacement of fixtures, furnishings, and equipment, existing on June 30, 2000. Expenditures from the account shall be subject to sections 37-31 and 37-33 to 37-40. Based on the prioritization approved by the department of education as prescribed by section 302A-1505, appropriations or authorizations from the account shall be expended by the superintendent of education.”

SECTION 4. Section 302A-1128, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department shall have entire charge and control and be responsible for the conduct of all affairs pertaining to public instruction[~~;~~], including operating and maintaining the capital improvement and repair and maintenance programs for department and school facilities. The department may establish and maintain schools for secular instruction at such places and for such terms as in its discretion it may deem advisable and the funds at its disposal may permit. The schools may include high schools, kindergarten schools, schools or classes for pregrade education, boarding schools, Hawaiian language medium education schools, and evening and day schools. The department may also maintain classes for technical and other instruction in any school where there may not be pupils sufficient in number to justify the establishment of separate schools for these purposes.”

SECTION 5. Section 302A-1312, Hawaii Revised Statutes, is amended by amending sections<sup>1</sup> (b) and (c) to read as follows:

“(b) The department of [~~accounting and general services, in consultation with the department of~~] education[~~;~~] shall develop and maintain a facilities physical analysis report and a facilities financial analysis report for each public school. These reports shall be posted electronically on the Internet.

(c) For the purposes of this section, the [~~comptroller~~] superintendent of education shall develop and implement appropriate planning procedures and follow-up accountability reports to ensure sound planning, control, and accountability in the use of moneys allocated by the legislature, as prescribed by section 302A-1309. The department of [~~accounting and general services~~] education shall submit an annual report to the legislature[~~, which~~] that shall include:

- (1) The priority listing established by section 302A-1505;
- (2) List of projects initiated by the department of [~~accounting and general services;~~] education; and
- (3) List of projects completed with associated actual cost.”

SECTION 6. Section 302A-1312, Hawaii Revised Statutes, is amended by amending section<sup>1</sup> (a) to read as follows:



“(a) The department of [~~accounting and general services, in consultation with the department of~~] education[;] shall prepare a six-year program and financial plan for school repair and maintenance [~~which~~] that shall be:

- (1) Based on:
  - (A) Estimated preventive and scheduled maintenance costs;
  - (B) Budgeted recurring maintenance;
  - (C) Health and safety requirements; and
  - (D) Legal mandates;
- (2) Insofar as is practical, prepared in accordance with the principles and procedures contained in section 514A-83.6; and
- (3) Submitted initially to the legislature not less than thirty days prior to the convening of the 2002 regular session, with annual funding requirements for the physical plant operations and maintenance account submitted not less than thirty days prior to the convening of the 2002 regular session and each regular session thereafter;

provided that the governor may incorporate the six-year program and financial plan required by this subsection into the six-year program and financial plan required by section 37-69, if the plan required by this subsection is incorporated without reductions or restrictions.”

SECTION 7. Act 164, Session Laws of Hawaii 2004, is amended by amending section 9 to read as follows:

“SECTION 9. Section 302A-1312, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department of [~~accounting and general services, in consultation with the department of~~] education[;] shall prepare a six-year program and financial plan for school repair and maintenance [~~which~~] that shall be:

- (1) Based on:
  - (A) Estimated preventive and scheduled maintenance costs;
  - (B) Budgeted recurring maintenance;
  - (C) Health and safety requirements; and
  - (D) Legal mandates;
- (2) Insofar as is practical, prepared in accordance with the principles and procedures contained in section -148; and
- (3) Submitted initially to the legislature not less than thirty days prior to the convening of the 2002 regular session, with annual funding requirements for the physical plant operations and maintenance account submitted not less than thirty days prior to the convening of the 2002 regular session and each regular session thereafter;

provided that the governor may incorporate the six-year program and financial plan required by this subsection into the six-year program and financial plan required by section 37-69, if the plan required by this subsection is incorporated without reductions or restrictions.””

SECTION 8. Section 302A-1505, Hawaii Revised Statutes, is amended to read as follows:

“**§302A-1505 Prioritization of repair and maintenance.** (a) Each school shall [~~meet with~~] inform the [~~departments~~] department of education [~~and accounting and general services~~] on an annual basis [~~to advise the department of school~~] of school repair and maintenance needs. Before any repair and maintenance projects for the upcoming fiscal year are implemented, each individual school administration shall

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prioritize and approve its repair and maintenance needs, and approve the scope of the implementation plan for the individual projects. After schools have prioritized their repair and maintenance projects, a statewide list shall be prepared ~~[and], reviewed, and approved by the department of [accounting and general services, and reviewed and approved by the department of]~~ education; provided that the department ~~[of education]~~ may make adjustments among schools and ~~[districts. Each school repair and maintenance priority listing shall be submitted by the department of education to the department of accounting and general services for implementation.]~~ complex areas. Each listing shall be posted electronically on the Internet. ~~[The department of accounting and general services shall implement the school repair and maintenance program in accordance with the priorities set forth by the department of education. Where there are differing views as to priorities, the department of education shall make the final decision.]~~

(b) Prior to ~~[meeting with]~~ informing the department ~~[to advise it of a]~~ about the school's repair and maintenance needs, the school's principal ~~[and the business and fiscal officer]~~ shall consider the recommendations made by the school community council or the local school board, if the school is a new century conversion charter school.

(c) In prioritizing a school's repair and maintenance needs, the department ~~[of accounting and general services,]~~ and the school's principal~~[-and the business and fiscal officer]~~ shall consider the availability of donated and discounted repair and maintenance services and materials that will be provided by community groups, volunteers, and businesses.''

SECTION 9. There is appropriated out of the education design and construction project assessment fund the sum of \$4,000,000, or so much thereof as may be necessary for fiscal year 2005-2006, and the sum of \$4,000,000, or so much thereof as may be necessary for fiscal year 2006-2007, to be expended for the purposes of this Act.

The sums appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 11. This Act shall take effect on July 1, 2005; provided that section 6 shall not take effect if the contingent amendment addressed in section 35(5) of Act 164, Session Laws of Hawaii 2004, takes effect on July 1, 2005; and provided further that section 7 shall not take effect if the contingent amendment addressed in section 35(5) of Act 164, Session Laws of Hawaii 2004, does not take effect on July 1, 2005.

(Approved July 5, 2005.)

### Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

## ACT 190

S.B. NO. 1478

A Bill for an Act Relating to the State Fire Council.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to provide the authority to the state fire council to expend any federal grant money it receives.

SECTION 2. Section 132-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In addition to adopting a state fire code pursuant to section 132-3, the state fire council shall serve as a focal point through which all applications to the federal government for federal assistance for fire-related projects shall be made. Upon the receipt of any such federal grants, the state fire council shall administer those federal grants.”

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 5, 2005.)

## ACT 191

H.B. NO. 758

A Bill for an Act Relating to Employment Practices.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to subpart B of part III to be appropriately designated and to read as follows:

“**§302A- Meal count assistants, adult supervisors, and classroom cleaners; minimum wage.** Except as provided in section 387-9, the wages of meal count assistants, adult supervisors, and classroom cleaners of the department shall be no less than the current state minimum wage as required in section 387-2.”

SECTION 2. Section 387-9, Hawaii Revised Statutes, is amended to read as follows:

“**§387-9 Special minimum wages for learners; apprentices; full-time students; paroled wards of Hawaii youth correctional facility; handicapped workers.** (a) Notwithstanding the provisions of section 387-2, the director may by ~~rules~~ rule provide for the employment:

- (1) Of learners, of apprentices, of part-time employees who are full-time students attending public or private schools other than colleges, universities, business schools, or technical schools, and of wards paroled from the Hawaii youth correctional facility, under special certificates issued by the director, at such wages lower than the applicable minimum wage and subject to such limitations as to time, number, proportion, and length of service as the director shall prescribe; and
  - (2) Of individuals whose earning capacity is impaired by old age or physical or mental deficiency or injury, under special certificates issued by the director, at such wages lower than the applicable minimum wage and for such period as shall be fixed in the certificates.
- [~~(b) (1) After June 30, 1974, and until June 30, 1976, notwithstanding the provisions of section 387-2 and of the foregoing subsection, an employer engaged in a seasonal pursuit may employ an employee:~~  
~~(A) To whom the minimum wage rate required by section 387-2 would apply in such employment but for this subsection, and~~”

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~~(B) Who is a full time student who attended a public or private school, other than a college, university, business school or technical school, for at least six months during the preceding twelve-month period, at a special minimum wage rate not less than eighty five per centum of a minimum wage applicable under section 387-2.~~

(2) (b) The director may by [regulation] rule prescribe standards and requirements to [insure] ensure that this [subsection] section will not create a substantial probability of reducing the full-time employment opportunities of persons other than those to whom the special minimum wage rate authorized by this [subsection] section is applicable.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved July 5, 2005.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 192

H.B. NO. 1320

A Bill for an Act Relating to Emergency 911.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“~~§46-~~ **Retention of emergency 911 recordings.** Each county public safety answering point shall retain recordings of all emergency 911 telephone calls and radio dispatches for a period of not less than one year.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect on July 1, 2005.

(Approved July 5, 2005.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 193

S.B. NO. 1100

A Bill for an Act Relating to Pseudoephedrine.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 329, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

**“§329- Pseudoephedrine permit.** (a) Beginning January 1, 2006, any person transporting by any means more than three packages of any product the sale of which is restricted by section 329- shall obtain a pseudoephedrine permit.

(b) The requirements imposed by section (a) shall not apply to persons registered with the department under section 329-67. A pseudoephedrine permit shall be issued by the department in a form and manner as prescribed by the department by rule. A pseudoephedrine permit shall be valid for one year and renewable annually.

**§329- Unlawful transport of pseudoephedrine.** (a) A person commits the offense of unlawful transport of pseudoephedrine if the person transports more than three packages of any product the sale of which is restricted by section 329- without a permit issued from the department.

(b) For purposes of this section, “transportation” means the transfer of a pseudoephedrine product by a person other than a wholesaler, distributor, or retailer of such product authorized to conduct business as such by the State.

(c) Unlawful transport of pseudoephedrine is a misdemeanor.

**§329- Sales of products, mixtures, or preparations containing pseudoephedrine; reporting requirement for wholesalers.** (a) Notwithstanding any other law to the contrary, a pharmacy or retailer may dispense, sell, or distribute without a prescription not more than three packages or not more than nine grams per transaction, of any product, mixture, or preparation containing any detectable quantity of pseudoephedrine, its salts, optical isomers, or salts of optical isomers, as the only active ingredient or in combination with other active ingredients; provided that the pharmacy or retailer complies with the following conditions:

- (1) The product, mixture, or preparation shall be dispensed, sold, or distributed from an area that is in the direct line of sight of an employee at the check-out station or counter;
- (2) The product, mixture, or preparation shall be dispensed, sold, or distributed from an area that is under constant video monitoring with signage placed near the drug that warns that the area is under constant video monitoring; or
- (3) The product, mixture, or preparation shall be dispensed, sold, or distributed from an area not accessible by customers or the general public, such as behind the counter or in a locked display case.

(b) The sales restriction in this section, as it applies to products, mixtures, or preparations containing any detectable quantity of pseudoephedrine, its salts, optical isomers, or salts of optical isomers, shall not apply to any products, mixtures, or preparations that are in liquid, liquid capsule, or gel capsule form if pseudoephedrine is not the only active ingredient.

(c) The department, by rule, may exempt other products from this section, including extended-release pseudoephedrine combination products, if the administrator finds that the products are not used in the illegal manufacture of methamphetamine or other controlled substances. A manufacturer of a drug product may apply for removal of the product from this section if the product is determined by the administrator to have been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine.

(d) Notwithstanding any other provision of this chapter to the contrary, every wholesaler shall report to the administrator all sales made to any retailer, of any product, mixture, or preparation containing any detectable quantity of pseudoephedrine, its salts, optical isomers, or salts of optical isomers, as the only active ingredient or in combination with other active ingredients. The department

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shall provide a common reporting form that contains at least the following information about the product, mixture, or preparation:

- (1) Generic or other name;
- (2) Quantity sold;
- (3) Date of sale;
- (4) Name and address of the wholesaler; and
- (5) Name and address of the retailer.

(e) For purposes of this section, "extended-release pseudoephedrine combination product" means any product containing pseudoephedrine that also contains other ingredients that protect the pseudoephedrine from immediate release and prevent the pseudoephedrine from being extracted."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect on July 1, 2005.

(Approved July 5, 2005.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 194

H.B. NO. 919

A Bill for an Act Relating to Use of Intoxicants.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 291E-61, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A person committing the offense of operating a vehicle under the influence of an intoxicant shall be sentenced as follows without possibility of probation or suspension of sentence:

- (1) For the first offense, or any offense not preceded within a five-year period by a conviction for an offense under this section or section 291E-4(a):
  - (A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable program deemed appropriate by the court;
  - (B) Ninety-day prompt suspension of license and privilege to operate a vehicle during the suspension period, or the court may impose, in lieu of the ninety-day prompt suspension of license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a vehicle and, for the remainder of the ninety-day period, a restriction on the license that allows the person to drive for limited work-related purposes and to participate in substance abuse treatment programs;
  - (C) Any one or more of the following:
    - (i) Seventy-two hours of community service work;
    - (ii) Not less than forty-eight hours and not more than five days of imprisonment; or

- (iii) A fine of not less than \$150 but not more than \$1,000; and
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund;
- (2) For an offense that occurs within five years of a prior conviction for an offense under this section or section 291E-4(a) by:
- (A) Prompt suspension of license and privilege to operate a vehicle for a period of one year with an absolute prohibition from operating a vehicle during the suspension period;
  - (B) Either one of the following:
    - (i) Not less than two hundred forty hours of community service work; or
    - (ii) Not less than five days but not more than fourteen days of imprisonment of which at least forty-eight hours shall be served consecutively;
  - (C) A fine of not less than \$500 but not more than \$1,500; and
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund;
- (3) For an offense that occurs within five years of two prior convictions for offenses under this section or section 291E-4(a):
- (A) A fine of not less than \$500 but not more than \$2,500;
  - (B) Revocation of license and privilege to operate a vehicle for a period not less than one year but not more than five years;
  - (C) Not less than ten days but not more than thirty days imprisonment of which at least forty-eight hours shall be served consecutively; and
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
  - (E) Forfeiture under chapter 712A of the vehicle owned and operated by the person committing the offense, provided that the department of transportation shall provide storage for vehicles forfeited under this subsection; and
- (4) Any person eighteen years of age or older who is convicted under this section and who operated a vehicle with a passenger, in or on the vehicle, who was younger than fifteen years of age, shall be sentenced to an additional mandatory fine of \$500 and an additional mandatory term of imprisonment of forty-eight hours; provided that the total term of imprisonment for a person convicted under this paragraph and paragraph (1), (2), or (3) shall not exceed thirty days.”

SECTION 2. Section 291E-61.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

- “(d) For a conviction under this section, the sentence shall be either:
- (1) An indeterminate term of imprisonment of five years; or
  - (2) A term of probation of five years, with conditions to include:
    - (A) Mandatory revocation of license and privilege to operate a vehicle for a period not less than one year but not more than five years;
    - (B) Not less than ten days imprisonment, of which at least forty-eight hours shall be served consecutively;
    - (C) Referral to a certified substance abuse counselor as provided in section 291E-61(d); and
    - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund.

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In addition to the foregoing, any vehicle owned and operated by the person committing the offense shall be subject to forfeiture pursuant to chapter 712A, provided that the department of transportation shall provide storage for vehicles forfeited under this subsection.”

SECTION 3. This Act shall not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 5, 2005.)

## ACT 195

H.B. NO. 1672

A Bill for an Act Relating to the Budget.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 42F, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§42F- Grants; release by the governor.** If a grant awarded by the legislature pursuant to this chapter is not allocated or released by the governor within ninety days of the effective date of the legislation awarding the grant, the governor shall notify, in the manner prescribed in section 1-28.5, the recipient of the un-released grant on the status of whether the grant is still pending or will not be released. The governor shall provide the notice once every quarterly allotment period (as the periods are defined in section 37-32), beginning on the ninety-first day after the effective date of the legislation awarding the grant and until a final determination is made on the status of the grant.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved July 5, 2005.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 196

S.B. NO. 179

A Bill for an Act Relating to Housing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The senate and house of representatives of the twenty-second legislature of the State of Hawaii, regular session of 2004, adopted senate concurrent resolution no. 135 S.D.1, requesting the housing and community development corporation of Hawaii to convene a task force to develop near-term solutions to Hawaii’s affordable housing shortage problem with respect to ownership and rental



markets. The affordable housing task force issued its report with findings and recommendations in January 2005.

The purpose of this Act is to implement many of the recommendations of the task force.

## PART I

SECTION 2. According to the "Consolidated Plan; Action Plan" of 2003, prepared by the housing and community development corporation of Hawaii, Hawaii's greatest housing need is housing for those earning below fifty per cent and from fifty to eighty per cent of the median family income. Over twenty eight thousand units are expected to be needed, and nearly forty per cent of those will be needed by those earning below eighty per cent of the median family income. These households carry the heaviest burdens with regard to the cost of rent, substandard housing quality, and overcrowding. According to the "Hawaii Housing Policy Study, 2003," over forty-seven per cent of all households (family of four) statewide have incomes at or below eighty per cent of the median family income.

The "Homeless Point-in-Time" report of 2003 found that approximately six thousand persons are homeless statewide at any given time. Of these six thousand persons, four thousand have no shelter, and the remainder live in temporary shelters. In 2003, the number of persons homeless during the year exceeded fourteen thousand persons. However, even more troubling is the dramatic increase in the number of "hidden homeless". The "hidden homeless" are those relying on public assistance, relatives, or friends for shelter because they cannot afford to live on their own. From 1992 to 2003, the hidden homeless more than doubled, from over ninety thousand to over two hundred twenty thousand persons. The very tight housing market in Hawaii drives out those who can least afford to pay for housing.

In short, affordable rental housing in Hawaii is in short supply or nonexistent. Even moderate-income families are priced out of the housing market.

Currently, the rental housing trust fund, established to increase the number of available rental housing units in the State, helps provide about two hundred to two hundred fifty units per year. But additional units are needed immediately to relieve families caught in crisis. To augment the housing and community development corporation of Hawaii's ability to provide additional rental housing units the legislature enacted House Bill 1303, during the 2005 regular session. House Bill 1303 amended section 247-7, Hawaii Revised Statutes, to raise the percentage of the conveyance tax allocated to the rental housing trust fund and consequently provide more funding for rental housing purposes.

The purpose of this part is to provide mechanisms and incentives that will help to increase the supply of low-income rental housing units for persons and families earning less than eighty per cent of the median family income.

SECTION 3. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§46- Land use density; low-income rental units.** Notwithstanding any other law to the contrary, the counties are authorized to provide flexibility in land use density provisions to encourage the development of any rental housing project where at least a portion of the rental units are set aside for persons and families with incomes at or below one hundred forty per cent of the area median family income, of which twenty per cent are set aside for persons and families with incomes at or below eighty per cent of the area median family income."

SECTION 4. Section 201G-116, Hawaii Revised Statutes, is amended to read as follows:

**“§201G-116 Exemption from general excise taxes.** (a) In accordance with section 237-29, the corporation may approve and certify for exemption from general excise taxes any qualified person or firm involved with a newly constructed, or moderately or substantially rehabilitated project:

- (1) Developed under this subpart;
- (2) Developed under a government assistance program approved by the corporation, including but not limited to, the United States Department of Agriculture 502 program and<sup>1</sup> Federal Housing Administration 235 program; [ø]
- (3) Developed under the sponsorship of a private nonprofit corporation providing home rehabilitation or new homes for qualified families in need of decent, low-cost housing[-]; or
- (4) Developed by a qualified person or firm to provide affordable rental housing where at least fifty per cent of the available units are for households with incomes at or below eighty per cent of the area median family income, as determined by the United States Department of Housing and Urban Development, of which at least twenty per cent of the available units are for households with incomes at or below sixty per cent of the area median family income as determined by the United States Department of Housing and Urban Development.

(b) All claims for exemption under this section shall be filed with and certified by the corporation and forwarded to the department of taxation. Any claim for exemption that is filed and approved, shall not be considered a subsidy for the purpose of this subpart.

(c) For the purposes of this section, “moderate rehabilitation” means rehabilitation to upgrade a unit to a decent, safe, and sanitary condition, or to repair or replace major building systems or components in danger of failure. “Substantial rehabilitation” means the improvement of a property to a decent, safe, and sanitary condition that requires more than routine or minor repairs or improvements and may include, but is not limited to, the gutting and extensive reconstruction of a unit or cosmetic improvements coupled with the curing of a substantial accumulation of deferred maintenance. “Substantial rehabilitation” also includes renovation, alteration, or remodeling to convert or adapt structurally sound property to the design and condition required for a specific use (e.g., conversion of a hotel to housing for elders).

(d) The corporation may establish, revise, charge, and collect a reasonable service fee, as necessary, in connection with its approvals and certifications under this section. The fees shall be deposited into the dwelling unit revolving fund.”

SECTION 5. Section 201G-432, Hawaii Revised Statutes, is amended to read as follows:

**“§201G-432 Rental housing trust fund.** (a) There is hereby established a rental housing trust fund to be placed within the corporation.

(b) An amount from the fund, to be set by the corporation and authorized by the legislature, may be used for administrative expenses incurred by the corporation in administering the fund; however, fund moneys may not be used to finance day-to-day administrative expenses of projects allotted fund moneys.

(c) The following may be deposited into the fund: appropriations made by the legislature, private contributions, repayment of loans, interest, other returns, and moneys from other sources.

(d) The fund shall be used to provide loans or grants for the development, pre-development, construction, acquisition, preservation, and substantial rehabilitation of rental housing units. Permitted uses of the fund may include but are not limited to planning, design, land acquisition, costs of options, agreements of sale, downpayments, equity financing, capacity building of nonprofit housing developers, or other housing development services or activities as provided in rules adopted by the corporation pursuant to chapter 91. The rules may provide for a means of recapturing loans or grants made from the fund if a rental housing project financed under the fund is refinanced or sold at a later date. The rules may also provide that moneys from the fund shall be leveraged with other financial resources to the extent possible.

(e) Moneys available in the fund shall be used for the purpose of providing, in whole or in part, loans or grants for rental housing projects ~~[wherein:]~~ in the following order of priority:

(1) Projects or units in projects that are allocated low-income housing credits pursuant to the state housing credit ceiling under section 42(h) of the Internal Revenue Code of 1986, as amended, or projects or units in projects that are funded by programs of the United States Department of Housing and Urban Development and United States Department of Agriculture Rural Development wherein:

~~[(4)]~~ (A) At least fifty per cent of the available units are for persons and families with incomes at or below ~~[sixty]~~ eighty per cent of the median family income[;]

(2) At] of which at least ~~[ten]~~ five per cent of the available units are for persons and families with incomes at or below thirty per cent of the median family income; and

~~[(3)]~~ (B) The remaining units are for persons and families with incomes at or below one hundred per cent of the median family income; provided that the corporation may establish rules to ensure full occupancy of fund projects[-]; and

(2) Mixed-income rental projects or units in a mixed-income rental project wherein all of the available units are for persons and families with incomes at or below one hundred forty per cent of the median family income.

(f) ~~[Commencing with fiscal year 1999-2000, at the close of each biennium, at least one-third of the funds allocated to construction projects for the period shall have been committed to projects that guarantee affordable units to persons or families with incomes at or below thirty per cent of the median income pursuant to [subsection] (e)(2). Commencing with the regular session of 2000, the]~~ The corporation shall submit an annual report to the legislature ~~[documenting existing projects in compliance with this subsection]~~ no later than twenty days prior to the convening of each regular session[-] describing the projects funded and, with respect to rental housing projects targeted for persons and families with incomes at or below thirty per cent of the median family income, its efforts to develop those rental housing projects, a description of proposals submitted for this target group and action taken on the proposals, and any barriers to developing housing units for this target group.

(g) For the purposes of this subpart, the applicable median family income shall be the median family income for the county or standard metropolitan statistical area in which the project is located as determined by the United States Department of Housing and Urban Development, as adjusted from time to time.

(h) ~~[Providing]~~ The corporation may provide loans and grants under this section; provided that the corporation shall establish loan-to-value ratios to protect the fund from inordinate risk and that under no circumstances shall the rules permit the loan-to-value ratio to exceed ~~[ninety-five]~~ one hundred per cent; and provided

further that the underwriting guidelines include a debt-coverage ratio of not less than ~~[1-05]~~ 1.0 to 1.

(i) For the period commencing July 1, 2005, through June 30, 2007, the fund may be used to provide grants for rental units set aside for persons and families with incomes at or below thirty per cent of the median family income in any project financed in whole or in part by the fund in proportion of those units to the total number of units in the project. At the conclusion of the period described in this subsection, the corporation shall report to the legislature on the number and use of grants provided and whether the grants were an effective use of the funds for purposes of developing rental housing for families at or below thirty per cent of median family income.”

SECTION 6. Section 201G-435, Hawaii Revised Statutes, is amended to read as follows:

“~~[E]~~**§201G-435**~~[E]~~ **Eligible applicants for funds.** Eligible applicants for funds shall include nonprofit and for-profit ~~[developers, including]~~ corporations, limited liability companies, partnerships, and government agencies, who are qualified in accordance with rules adopted by the corporation pursuant to chapter 91.”

SECTION 7. Section 201G-436, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Preference shall be given to projects producing units in at least one of the following categories:

- (1) Multifamily units;
- (2) Attached single-family units;
- (3) Apartments;
- (4) Townhouses;
- (5) Housing units above commercial or industrial space;
- (6) Single room occupancy units;
- (7) Accessory apartment units;
- (8) Employee housing; ~~[and]~~
- (9) United States Department of Housing and Urban Development mixed finance development of public housing units; and
- (10) Other types of units meeting the criteria for eligibility set forth in subsection (c).

(c) The corporation shall establish an application process for fund allocation that gives preference to projects meeting the criteria set forth below that are listed in descending order of priority:

- (1) Serve the original target group;
- (2) Provide at least five per cent of the total number of units for persons and families with incomes at or below thirty per cent of the median family income;
- ~~[(2)]~~ (3) Provide maximum number of units for ~~[the least amount of subsidy]~~ persons or families with incomes at or below eighty per cent of the median family income;
- ~~[(3)]~~ (4) Are committed to serving the target population over a longer period of time;
- ~~[(4)]~~ (5) Increase the integration of income levels of the immediate community area;
- ~~[(5)]~~ (6) Meet the geographic needs of the target population of the proposed rental housing project, such as proximity to employment centers and services; and

~~[(6)]~~ (7) Have favorable past performance [~~with fund moneys.~~] in developing, owning, managing, or maintaining affordable rental housing.

The corporation may include other criteria in the above process as it deems necessary to carry out the purposes of this part.

If the corporation, after applying the process described in this subsection, finds a nonprofit project equally ranked with a for-profit or government project, the corporation shall give preference to the nonprofit project in allotting fund moneys.”

SECTION 8. Section 235-110.8, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The low-income housing tax credit shall be [~~thirty~~] fifty per cent of the applicable percentage of the qualified basis of each building located in Hawaii. [~~Applicable~~] The applicable percentage shall be calculated as provided in section 42(b) of the Internal Revenue Code.”

SECTION 9. Section 247-3, Hawaii Revised Statutes, is amended to read as follows:

“**§247-3 Exemptions.** The tax imposed by section 247-1 shall not apply to:

- (1) Any document or instrument that is executed prior to January 1, 1967;
- (2) Any document or instrument that is given to secure a debt or obligation;
- (3) Any document or instrument that only confirms or corrects a deed, lease, sublease, assignment, transfer, or conveyance previously recorded or filed;
- (4) Any document or instrument between husband and wife, reciprocal beneficiaries, or parent and child, in which only a nominal consideration is paid;
- (5) Any document or instrument in which there is a consideration of \$100 or less paid or to be paid;
- (6) Any document or instrument conveying real property that is executed pursuant to an agreement of sale, and where applicable, any assignment of the agreement of sale, or assignments thereof; provided that the taxes under this chapter have been fully paid upon the agreement of sale, and where applicable, upon such assignment or assignments of agreements of sale;
- (7) Any deed, lease, sublease, assignment of lease, agreement of sale, assignment of agreement of sale, instrument or writing in which the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof are the only parties thereto;
- (8) Any document or instrument executed pursuant to a tax sale conducted by the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof for delinquent taxes or assessments;
- (9) Any document or instrument conveying real property to the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof pursuant to the threat of the exercise or the exercise of the power of eminent domain;
- (10) Any document or instrument that solely conveys or grants an easement or easements;
- (11) Any document or instrument whereby owners partition their property, whether by mutual agreement or judicial action; provided that the value

- of each owner's interest in the property after partition is equal in value to that owner's interest before partition;
- (12) Any document or instrument between marital partners or reciprocal beneficiaries who are parties to a divorce action or termination of reciprocal beneficiary relationship that is executed pursuant to an order of the court in the divorce action or termination of reciprocal beneficiary relationship;
  - (13) Any document or instrument conveying real property from a testamentary trust to a beneficiary under the trust;
  - (14) Any document or instrument conveying real property from a grantor to the grantor's revocable living trust, or from a grantor's revocable living trust to the grantor as beneficiary of the trust;
  - (15) Any document or instrument conveying real property, or any interest therein, from an entity that is a party to a merger or consolidation under chapter 414, 414D, 415A, 421, 421C, 425, 425E, or 428 to the surviving or new entity; ~~and~~
  - (16) Any document or instrument conveying real property, or any interest therein, from a dissolving limited partnership to its corporate general partner that owns, directly or indirectly, at least a ninety per cent interest in the partnership, determined by applying section 318 (with respect to constructive ownership of stock) of the federal Internal Revenue Code of 1986, as amended, to the constructive ownership of interests in the partnership[-]; and
  - (17) Any document or instrument conveying real property to any nonprofit or for-profit organization that has been certified by the housing and community development corporation of Hawaii for low-income housing development."

PART II

SECTION 10. The legislature finds that rehabilitating public housing that has been decommissioned by the State will increase the supply of low-income rental housing units.

The purpose of this part is to help the unsheltered and hidden homeless population by determining whether decommissioned public housing can be rehabilitated, including:

- (1) Prior to their demolition, offering decommissioned public housing to private nonprofit and for-profit entities to rehabilitate into rental housing for people in the lowest income bracket; and
- (2) Declaring a moratorium on the demolition of decommissioned public housing until a determination has been made whether to rehabilitate them.

SECTION 11. Section 201G-44, Hawaii Revised Statutes, is amended to read as follows:

**"§201G-44 Administration of state ~~low income~~ low-income housing projects and programs.** (a) The corporation may construct, develop, and administer property or housing for the purpose of state ~~low income~~ low-income housing projects and programs.

(b) The corporation may offer any decommissioned low-income public housing project, except for federal housing projects, to nonprofit or for-profit organizations or government agencies for rehabilitation into emergency or transitional shelter facilities for the homeless or rehabilitation into rental units that set

aside at least fifty per cent of the units to persons or families with incomes at or below fifty per cent of the area median family income; provided that:

- (1) The housing project is wholly owned by the State on either state-owned or ceded lands;
- (2) The corporation has determined that the housing project is no longer suitable for its original use and intends to demolish the housing project;
- (3) The corporation has determined that the housing project is not eligible for rehabilitation using the corporation's current resources; and
- (4) The nonprofit or for-profit organization or government agency demonstrates expertise in rehabilitation of housing projects and has community, public, and private resources to substantially pay for the rehabilitation.

The land and improvements may be leased to the nonprofit or for-profit organization or government agency for a period not to exceed ninety-nine years for a sum of \$1 per year.

~~[(b)]~~ (c) The corporation shall adopt necessary rules in accordance with chapter 91, including the establishment and collection of reasonable fees for administering the projects or programs and to carry out any state program under ~~[f]subsection[)]~~ (a).”

SECTION 12. The legislature declares a moratorium on the demolition of all decommissioned housing projects administered by the housing and community development corporation of Hawaii for two years or until such time that the housing projects may be offered for rehabilitation to nonprofit or for-profit organizations and government agencies in accordance with section 201G-44, Hawaii Revised Statutes, whichever occurs first.

### PART III

SECTION 13. The legislature finds that reducing the hidden homeless population through the development of low-income rental housing is equally important to helping the unsheltered homeless population or those who have a primary nighttime residence that is a public or private place not ordinarily used as a regular sleeping accommodation, such as a beach. The legislature finds that there are about four thousand unsheltered homeless in Hawaii.

The legislature finds that even though the housing and community development corporation of Hawaii's "Strategic Plan" 2005-2010 states that its goal is to end chronic homelessness by 2010, its strategic objectives for calendar year 2005 offer no immediate solutions to assist the homeless population.

The legislature further finds that the funds appropriated in House Bill 100, the General Appropriations Act of 2005-2007,<sup>2</sup> in the sum of \$1,650,000 for each year of the 2005-2007 fiscal biennium, will be used for the expansion and operation of emergency and transition shelter facilities serving the homeless.

Accordingly, the purpose of this part is to help the unsheltered homeless population by establishing measurable goals to determine that more homeless are being served and transitioned into permanent housing.

SECTION 14. Section 201G-461, Hawaii Revised Statutes, is amended to read as follows:

**“§201G-461 Annual performance audits.** (a) The corporation shall require any provider agency that dispensed shelter or assistance for any homeless facility or any other program for the homeless authorized by this part to submit to the corporation a financial audit and report on an annual basis conducted by a certified

public accounting firm. This audit and report shall contain information specific to the funds received under state homeless programs contracts. The audit shall include recommendations to address any problems found.

(b) Continuing contracts with provider agencies to participate in any program for the homeless authorized by this part shall require that the provider agency address the recommendations made by the auditing agency, subject to exceptions as set by the corporation.

(c) Failure to carry out the recommendations made by the auditing agency may be grounds for the corporation to bar a provider agency from further contracts for programs authorized by this part until the barred provider has addressed all deficiencies.

(d) As a condition of continued contracts, the corporation shall require all provider agencies to submit an annual report that contains statistical information to enable the corporation to measure the effectiveness of contracted services in transitioning homeless into permanent housing.’’

PART IV

SECTION 15. The legislature finds that private-public partnerships encourage the development of affordable ownership housing programs. A family of four with one hundred forty per cent of median income, currently \$91,980 in Honolulu, \$71,400 on the island of Hawaii, \$84,980 on Maui, and \$78,820 on Kauai, are part of a gap group that are shut out of the median-priced homes in their communities. For example, a typical family of four in Honolulu that earns \$92,000 may qualify for a home priced at \$376,800, assuming a six per cent interest rate on their home mortgage. However, the median price of a home in Honolulu is nearly \$500,000.

The purpose of this part is to provide incentives to develop affordable moderate income housing, aimed at households whose income does not exceed one hundred forty per cent of median family income.

SECTION 16. Section 201G-118, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The corporation may develop, on behalf of the State or with an eligible developer, or may assist under a government assistance program in the development of, housing projects which shall be exempt from all statutes, ordinances, charter provisions, and rules of any governmental agency relating to planning, zoning, construction standards for subdivisions, development and improvement of land, and the construction of units thereon; provided that:

(1) The project primarily or exclusively includes housing units affordable to households with incomes at or below one hundred forty per cent of the median family income;

~~[(1)]~~ (2) The corporation finds the project is consistent with the purpose and intent of this chapter, and meets minimum requirements of health and safety;

~~[(2)]~~ (3) The development of the proposed project does not contravene any safety standards, tariffs, or rates and fees approved by the public utilities commission for public utilities or the various boards of water supply authorized under chapter 54; ~~[and]~~

~~[(3)]~~ (4) The legislative body of the county in which the project is to be situated shall have approved the project.

(A) The legislative body shall approve or disapprove the project by resolution within forty-five days after the corporation has submitted the preliminary plans and specifications for the project to



- the legislative body. If on the forty-sixth day a project is not disapproved, it shall be deemed approved by the legislative body;
- (B) No action shall be prosecuted or maintained against any county, its officials, or employees on account of actions taken by them in reviewing, approving, or disapproving the plans and specifications; and
- (C) The final plans and specifications for the project shall be deemed approved by the legislative body if the final plans and specifications do not substantially deviate from the preliminary plans and specifications. The final plans and specifications for the project shall constitute the zoning, building, construction, and subdivision standards for that project. For purposes of sections 501-85 and 502-17, the executive director of the corporation, or the responsible county official may certify maps and plans of lands connected with the project as having complied with applicable laws and ordinances relating to consolidation and subdivision of lands, and the maps and plans shall be accepted for registration or recordation by the land court and registrar; and
- [(4)] (5) The land use commission shall approve or disapprove a boundary change within forty-five days after the corporation has submitted a petition to the commission as provided in section 205-4. If on the forty-sixth day the petition is not disapproved, it shall be deemed approved by the commission.”

SECTION 17. Section 201G-123, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The interim loans shall be secured by a duly recorded [~~first~~] primary or secondary mortgage upon the fee simple or leasehold interest in the land upon which the dwelling units are constructed, or the corporation may require other security interests and instruments as it deems necessary to secure the indebtedness and such other conditions consistent with the production and marketing of dwelling units at the lowest possible prices. The corporation may also set the conditions of a loan in a building and loan agreement between the borrower and the corporation in order to secure the loan and the performance of the borrower to complete the project.”

SECTION 18. Section 201G-411, Hawaii Revised Statutes, is amended to read as follows:

“**§201G-411 Dwelling unit revolving fund.** There is created a dwelling unit revolving fund. The funds appropriated for the purpose of the dwelling unit revolving fund and all moneys received or collected by the corporation for the purpose of the revolving fund shall be deposited in the revolving fund. The proceeds in the revolving fund shall be used to reimburse the general fund to pay the interest on general obligation bonds issued for the purposes of the revolving fund, for the necessary expenses in administering subpart F, part II, and for carrying out the purposes of subpart F, part II, including but not limited to the expansion of community facilities constructed in conjunction with housing projects, permanent primary or secondary financing, and supplementing building costs, federal guarantees required for operational losses, and all things required by any federal agency in the construction and receipt of federal funds or low-income housing tax credits for housing projects.”

PART V

SECTION 19. The affordable housing task force recommended that the housing and community development corporation of Hawaii be split into two organizations to more effectively concentrate on the development of affordable housing. The legislature finds that the State’s role in maintaining affordable housing in Hawaii has evolved into two parts:

- (1) Administering the State’s public housing programs; and
- (2) Financing and developing affordable housing.

The housing and community development corporation of Hawaii has managed both of these functions since its inception. However, the burden of administering the public housing projects in the State has overshadowed the ability of the corporation to pay sufficient attention to the financing and development of affordable housing.

The purpose of this part and parts VI and VII is to establish:

- (1) The Hawaii public housing administration to perform the function of developing and maintaining public housing; and
- (2) The Hawaii housing finance and development administration to perform the function of housing financing and development.

SECTION 20. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
HAWAII HOUSING FINANCE AND DEVELOPMENT  
ADMINISTRATION**

§ -1 **Definitions.** The following terms, wherever used or referred to in this chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

“Administration” means the Hawaii housing finance and development administration.

“Board” means the board of directors of the Hawaii housing finance and development administration.

“Bonds” means any bonds, interim certificates, notes, debentures, participation certificates, pass-through certificates, mortgage-backed obligations, or other evidences of indebtedness of the administration issued pursuant to this chapter.

“Community facilities” includes: real and personal property; buildings, equipment, lands, and grounds for recreational or social assemblies, or educational, health, or welfare purposes; and necessary or convenient utilities, when designed primarily for the benefit and use of the administration or the occupants of the dwelling.

“Contract” means any agreement of the administration with an obligee or a trustee for the obligee, whether contained in a resolution, trust indenture, mortgage, lease, bond, or other instrument.

“Dwelling”, “dwelling unit”, or “unit” means any structure or room, for sale, lease, or rent, that provides shelter.

“Elder” or “elderly” means a person who is a resident of the state and has attained the age of sixty-two years.

“Elder or elderly households” means households in which at least one member is at least sixty-two years of age, the spouse or partner of that member has attained the age of majority, and the remaining members have attained the age of fifty-five years at the time of application to a public housing project. A live-in aide shall cease to be a resident therein upon the recovery of, or removal from the project of, the elder.

“Elder or elderly housing” means:

- (1) A housing project intended for and occupied by elder or elderly households; or
- (2) Housing provided under any state or federal program that the Secretary of the United States Department of Housing and Urban Development determines is specifically designed and operated to assist elders or elderly persons, which, upon a determination by the Secretary, may also be occupied by persons with disabilities who have reached the age of majority.

“Executive director” means the executive director of the Hawaii housing finance and development administration.

“Federal government” includes the United States and any agency or instrumentality, corporate or otherwise, of the United States.

“Government” includes the State and the United States and any political subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

“Household member” means a person who:

- (1) Is a co-applicant; or
- (2) Will reside in the dwelling unit purchased from the corporation.

“Housing project” or “project” includes all real and personal property, buildings and improvements, commercial spaces, lands for farming and gardening, and community facilities acquired or constructed or to be acquired or constructed, and all tangible or intangible assets held or used in connection with the housing project.

The term “housing project” or “project” may also be applied to the planning of the buildings and improvements, the acquisition of property by purchase, lease, or otherwise, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection therewith.

“Land” or “property” includes vacant land or land with site improvements, whether partially or entirely finished in accordance with governmental subdivision standards, or with complete dwellings.

“Live-in aide” means a person who:

- (1) Is eighteen years of age or older;
- (2) Is living in the unit solely to assist the elder or elderly person in daily living activities, including bathing, meal preparation and delivery, medicinal care, transportation, and physical activities;
- (3) Is not legally obligated to support the elder or elderly person; and
- (4) Is verified by the administration as meeting these requirements.

“Mortgage holder” includes the United States Department of Housing and Urban Development, Federal Housing Administration, the United States Department of Agriculture, or other federal or state agency engaged in housing activity, Administrator of Veterans Affairs, Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, private mortgage lender, private mortgage insurer, and their successors, grantees, and assigns.

“Mortgage lender” means any bank, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage banker, credit union, insurance company, or any other financial institution, or a holding company for any of the foregoing, that:

- (1) Is authorized to do business in the State;
- (2) Customarily provides service or otherwise aids in the financing of mortgages on single-family or multifamily residential property; and
- (3) Is a financial institution whose accounts are federally insured or is an institution that is an approved mortgagee for the Federal Housing

Administration, an approved lender for the United States Department of Veterans Affairs or the United States Department of Agriculture, or an approved mortgage loan servicer for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

“Nonprofit organization” means a corporation, association, or other duly chartered entity that is registered with the State and has received a written determination from the Internal Revenue Service that it is exempt under either section 501(c)(3), section 501(c)(4), or so much of section 501(c)(2) as applied to title holding corporations that turn over their income to organizations that are exempt under either section 501(c)(3) or 501(c)(4), of the Internal Revenue Code of 1986, as amended.

“Obligee of the administration” or “obligee” includes any bondholder, trustee or trustees for any bondholders, any lessor demising property to the administration used in connection with a housing project, or any assignee or assignees of the lessor’s interest or any part thereof, and the United States, when it is a party to any contract with the administration.

“Real property” includes lands, land under water, structures, and any and all easements, franchises, and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage, or otherwise.

“Trustee” means a national or state bank or trust company located within or outside the State that enters into a trust indenture.

“Trust indenture” means an agreement by and between the administration and the trustee, which sets forth the duties of the trustee with respect to the bonds, the security therefor, and other provisions as deemed necessary or convenient by the corporation to secure the bonds.

**§ -2 Hawaii housing finance and development administration; establishment, staff.** (a) There is established the Hawaii housing finance and development administration to be placed within the department of business, economic development, and tourism for administrative purposes only. The administration shall be a public body and a body corporate and politic.

(b) The administration shall employ, exempt from chapter 76 and section 26-35(a)(4), an executive director and an executive assistant. The executive director shall be paid a salary not to exceed eighty-five per cent of the salary of the director of human resources development. The executive assistant shall be paid a salary not to exceed ninety per cent of the executive director’s salary. The administration may employ, subject to chapter 76, technical experts and officers, agents, and employees, permanent and temporary, as required. The administration may also employ officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, not subject to chapter 76, when in the determination of the administration, the services to be performed are unique and essential to the execution of the functions of the administration. The administration may call upon the attorney general for legal services as it may require. The administration may delegate to one or more of its agents or employees its powers and duties as it deems proper.

**§ -3 Board; establishment, functions, duties.** (a) There is created a board of directors of the Hawaii housing finance and development administration consisting of nine members, of whom six shall be public members appointed by the governor as provided in section 26-34. At least four of the public members shall have knowledge and expertise in public or private finance and development of affordable housing. Public members shall be appointed from each of the counties of Honolulu, Hawaii, Maui, and Kauai. At least one public member shall represent community advocates for low-income housing, affiliated with private nonprofit

organizations that serve the residents of low-income housing. The public members of the board shall serve four-year staggered terms; provided that the initial appointments shall be as follows:

- (1) Two members to be appointed for four years;
- (2) Two members to be appointed for three years; and
- (3) Two members to be appointed for two years.

The director of business, economic development, and tourism and the director of finance, or their designated representatives, and a representative of the governor's office, shall be an ex officio voting member. The administration shall be headed by the board.

(b) The board of directors shall select a chairperson and vice chairperson from among its members; provided that the chairperson shall be a public member. The director of business, economic development, and tourism, director of finance, and the governor's representative shall be ineligible to serve as chairperson of the board.

(c) Five members shall constitute a quorum, whose affirmative vote shall be necessary for all actions by the administration. The members shall receive no compensation for services, but shall be entitled to necessary expenses, including travel expenses, incurred in the performance of their duties.

**§ -4 General powers.** (a) The administration may:

- (1) Sue and be sued;
- (2) Have a seal and alter the same at pleasure;
- (3) Make and execute contracts and other instruments necessary or convenient to the exercise of its powers; and
- (4) Adopt bylaws and rules in accordance with chapter 91 for its organization, internal management, and to carry into effect its purposes, powers, and programs.

(b) In addition to other powers conferred upon it, the administration may do all things necessary and convenient to carry out the powers expressly provided in this chapter.

**§ -5 Fair housing law to apply.** Notwithstanding any law to the contrary, the provisions of chapter 515 shall apply in administering this chapter.

**§ -6 Housing advocacy and information system.** (a) The administration, with the assistance of other agencies of the State and counties with related responsibilities, shall develop and maintain a housing advocacy and information system to aid the administration in meeting the needs and demands of housing consumers.

(b) In establishing and maintaining the housing advocacy and information system, the administration shall conduct market studies, engage in community outreach, and solicit recommendations from and statistics and research developed by agencies of the United States, the State, the counties, private research organizations, nonprofit community groups, trade associations, including those of the construction and real estate industries, departments, individuals at the University of Hawaii, and housing consumers.

(c) The administration shall analyze the information received and make recommendations to the appropriate agencies and developers.

(d) The administration, through the housing advocacy and information system, shall act as a clearinghouse for information relating to housing conditions, needs, supply, demand, characteristics, developments, trends in federal housing programs, and housing laws, ordinances, rules, and regulations.

(e) The housing advocacy and information system may be used by housing researchers, planners, administrators, and developers and shall be coordinated with

other housing research efforts. The administration shall maintain a current supply of information, including means to gather new information through surveys, contracted research, and investigations.

§ -7 **Housing research.** (a) The administration may study the plans of any government in relation to the problem of clearing, replanning, or reconstructing an area in which unsafe or unsanitary public dwelling or public housing conditions exist.

(b) The administration may purchase materials for the development of land and the construction of dwelling units in the manner it concludes to be most conducive to lower costs, including purchase from other states or from foreign countries for drop shipment in the State or on cost-plus contracts for materials with persons or firms doing business in the State, or otherwise.

(c) The administration may conduct, or cause to be conducted, research on housing needs, materials, design, or technology, and apply the findings of the investigation to housing projects, including the following:

- (1) Sociocultural investigation of housing and community utilization, preferences, or needs of residents within the housing need classification of the housing functional plan;
- (2) Development of technology for the application of innovative building systems or materials, to provide energy or resource conservation or cost savings in the construction or operation of a housing project;
- (3) Investigation of the applicability of locally-produced building materials and systems to dwelling unit construction;
- (4) Investigation of new forms of project construction, maintenance, operation, financing, or ownership, involving tenants, homeowners, financing agencies, and others; or
- (5) Other necessary or appropriate research that may lower the long-term costs of housing, conserve resources, or create communities best suited to the needs of residents.

(d) In the development and construction of a housing project, the administration may provide for an on-the-job training program or other projects as it may deem justifiable, including innovative projects to develop a larger qualified work force in the State.

§ -8 **Housing counseling.** The administration may provide the following services for the programs it administers:

- (1) Listing and referral services to tenants seeking to rent homes;
- (2) Counseling to tenants on matters such as financial management and budgeting, basic housekeeping, communicating effectively and getting along with others, and other matters as may be desirable or necessary;
- (3) Counseling to prospective homeowners on the rudiments of owning a home;
- (4) Assistance to any person or government agency regarding the nature and availability of federal assistance for housing development and community development or redevelopment;
- (5) Counseling and guidance services to aid: any person or government agency in securing the financial aid or cooperation of the federal government in undertaking, constructing, maintaining, operating, or financing any housing designated for elders; persons displaced by governmental action; university and college students and faculty; and any other persons; and

- (6) Assistance to a county agency upon request from the agency in the development of programs to correct or eliminate blight and deterioration and to effect community development.

**§ -9 Acquisition, use, and disposition of property.** (a) The administration may acquire any real or personal property or interest therein by purchase, exchange, gift, grant, lease, or other means from any person or government to provide housing. Exchange of real property shall be in accordance with section 171-50.

(b) The administration may own or hold real property. All real property owned or held by the administration shall be exempt from mechanic's or materialman's liens and also from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the administration be a charge or lien upon its real property; provided that this subsection shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage of the administration or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by the administration on its rents, fees, or revenues. The administration and its property shall be exempt from all taxes and assessments.

(c) The administration may lease or rent all or a portion of any housing project and establish and revise the rents or charges therefor. The administration may sell, exchange, transfer, assign, or pledge any property, real or personal, or any interest therein to any person or government.

(d) The administration may insure or provide for the insurance of its property or operations against risks as it deems advisable.

**§ -10 Cooperative agreements with other governmental agencies.** (a) The administration may:

- (1) Obtain the aid and cooperation of governmental agencies in the planning, construction, and operation of public housing projects and enter into agreements and arrangements as it deems advisable to obtain aid and cooperation;
- (2) Arrange or enter into agreements with any governmental agency for the acquisition of property, options, or property rights or for the furnishing, installing, opening, or closing of streets, roads, alleys, sidewalks, or other places, or for the furnishing of property, services, parks, sewage, water, and other facilities in connection with housing projects, or for the changing of the map of a political subdivision or the planning, replanning, zoning, or rezoning of any part of a political subdivision;
- (3) Procure insurance or guarantees from any governmental agency for the payment of any debts or parts thereof incurred by the administration, including the power to pay premiums on any such insurance; and
- (4) Agree to make payments to any state or county agency, if the agency is authorized to accept payments, as the administration deems consistent with the maintenance of the character of housing projects or the purposes of this chapter.

(b) For the purpose of aiding and cooperating in the planning, construction, and operation of housing projects located within their respective territorial boundaries, any state or county agency, upon those terms, with or without consideration, as it determines, may:

- (1) Dedicate, grant, sell, convey, or lease any of its property or grant easements, licenses, or any other rights or privileges therein to the administration or to the federal government;
- (2) To the extent that it is within the scope of the agency:

- (A) Cause the services customarily provided by the agency to be rendered for the benefit of housing projects and the occupants thereof;
  - (B) Provide and maintain parks and sewage, water, lights, and other facilities adjacent to or in connection with housing projects;
  - (C) Open, close, pave, install, or change the grade of streets, roads, roadways, alleys, sidewalks, or other related facilities; and
  - (D) Change the map of a political subdivision or plan, replan, zone, or rezone any part of a political subdivision;
- (3) Enter into agreements with the administration with respect to the exercise of their powers relating to the repair, closing, or demolition of unsafe, unsanitary, or unfit dwellings;
  - (4) Employ, notwithstanding any other law as to what constitutes legal investments, any available funds belonging to them or within their control, including funds derived from the sale or furnishing of property or facilities to the administration, in the purchase of bonds or other obligations of the administration to the extent provided under section 201G-161; and exercise all the rights of any holder of the bonds or other obligations;
  - (5) Do any and all things necessary or convenient to aid and cooperate in the planning, undertaking, and construction of such housing projects; and
  - (6) Enter into contracts with the administration or the federal government for any period agreeing to exercise any of the powers conferred hereby or to take any other action in aid of such housing projects.

In connection with the exercise of this power, any political subdivision may incur the entire expense of any such public improvements located within its territorial boundaries without assessment against abutting property owners.

For the purpose of aiding and cooperating in the planning, construction, and operation of housing projects, the department of land and natural resources, the Hawaiian homes commission, and any other agency of the State having power to manage or dispose of its public lands, with the approval of the governor and with or without consideration, may grant, sell, convey, or lease, for any period, any parts of such public lands, without limit as to area, to the administration or to the federal government.

Any law to the contrary notwithstanding, any gift, grant, sale, conveyance, lease, or agreement provided for in this section may be made by the state or county government without appraisal, public notice, advertisement, or public bidding.

If at any time title to, or possession of, any housing project is held by any governmental agency authorized by law to engage in the development or administration of low-rent housing or slum clearance projects, any agreement made under this chapter relating to the project shall inure to the benefit of and may be enforced by that governmental agency.

Insofar as this subsection is inconsistent with the provisions of any other law, this subsection shall be controlling.

(c) Any county in which a public housing project is located or is about to be located may make donations or advances to the administration in sums as the county in its discretion may determine. The advances or donations shall be made for the purpose of aiding or cooperating in the construction and operation of the housing project. The administration, when it has money available therefor, shall reimburse the county for all advances made by way of a loan to it.

§ -11 **Agents, including corporations.** The administration may exercise any or all of the powers conferred upon it, either generally or with respect to any



specific housing project through an agent that it may designate, including any corporation that is formed under the laws of this State, and for such purposes the administration may cause one or more corporations to be formed under the laws of this State or may acquire the capital stock of any corporation. Any corporate agent, all of the stock of which shall be owned by the administration or its nominee, to the extent permitted by law, may exercise any of the powers conferred upon the administration in this chapter.

**§ -12 Development of property.** (a) The administration, in its own behalf or on behalf of any federal, state, or county agency, may:

- (1) Clear, improve, and rehabilitate property;
- (2) Plan, develop, construct, and finance housing projects; and
- (3) In cooperation with the department of education and department of accounting and general services, plan educational facilities and related infrastructure as a necessary and integral part of its public housing projects, using all its innovative powers toward achieving that end expeditiously and economically; provided that the educational facilities comply with the department of education's educational specifications, timelines, and siting requirements.

(b) The administration may develop public land in an agricultural district subject to the prior approval of the land use commission, when developing lands greater than fifteen acres in size, and public land in a conservation district subject to the prior approval of the board of land and natural resources. The administration shall not develop state monuments or historical sites or parks. When the administration proposes to develop public land, it shall file with the department of land and natural resources a petition setting forth such purpose. The petition shall be conclusive proof that the intended use is a public use superior to that which the land has been appropriated.

(c) The administration may develop or assist in the development of federal lands with the approval of appropriate federal authorities.

(d) The administration shall not develop any public land where the development may endanger the receipt of any federal grant, impair the eligibility of any public body for a federal grant, prevent the participation of the federal government in any government program, or impair any covenant between the government and the holder of any bond issued by the government.

(e) The administration may contract or sponsor with any county, housing authority, or person, subject to the availability of funds, an experimental or demonstration housing project designed to meet the needs: of elders; the disabled; displaced or homeless persons; low- and moderate-income persons; teachers or other government employees; or university and college students and faculty.

**§ -13 Eminent domain, exchange or use of public property.** The administration may acquire any real property, including fixtures and improvements, or interest therein: through voluntary negotiation; through exchange of land in accordance with section 171-50, provided that the public land to be exchanged need not be of like use to that of the private land; or by the exercise of the power of eminent domain which it deems necessary by the adoption of a resolution declaring that the acquisition of the property described therein is in the public interest and required for public use. The administration shall exercise the power of eminent domain granted by this section in the same manner and procedure as is provided by chapter 101 and otherwise in accordance with all applicable provisions of the general laws of the State; provided that condemnation of parcels greater than fifteen acres shall be subject to legislative disapproval expressed in a concurrent resolution

adopted by majority vote of the senate and the house of representatives in the first regular or special session following the date of condemnation.

The administration may acquire by the exercise of the power of eminent domain property already devoted to a public use; provided that no property belonging to any government may be acquired without its consent, and that no property belonging to a public utility corporation may be acquired without the approval of the public utilities commission, and subject to legislative disapproval expressed in a concurrent resolution adopted by majority vote of the senate and the house of representatives in the first regular or special session following the date of condemnation.

**§ -14 Contracts with federal government.** (a) The administration may:

- (1) Borrow money or accept grants from the federal government for or in aid of any housing project that the administration is authorized to undertake;
- (2) Take over any land acquired by the federal government for the construction or operation of a housing project with the approval of the federal government or at the request of the federal government;
- (3) Procure insurance or guarantees from the federal government of the payment of any debts or parts thereof secured by mortgages made or held by the administration on any property included in any housing project; and
- (4) Comply with any conditions required by the federal government in any contract for financial assistance.

(b) It is the purpose and intent of this part to authorize the administration to do any and all things necessary to secure the financial aid and the cooperation of the federal government in the undertaking, construction, maintenance, and operation of any housing project that the administration is empowered to undertake.

**§ -15 Administration of low-income housing credit allowed under section 235-110.8.** (a) The administration is designated as a state housing credit agency to carry out section 42(h) (with respect to limitation on aggregate credit allowable with respect to a project located in a state) of the Internal Revenue Code of 1986, as amended. As a state housing credit agency, the administration shall determine the eligibility basis for a qualified low-income building, make the allocation of housing credit dollar amounts within the State, and determine the portion of the State's housing credit ceiling set aside for projects involving qualified nonprofit organizations. The administration shall file any certifications and annual reports required by section 42 (with respect to low-income housing credit) of the Internal Revenue Code of 1986, as amended.

(b) The state aggregate housing credit dollar amount shall be allocated annually as required by section 42 of the Internal Revenue Code of 1986, as amended, by the administration in an amount equal to \$1.25 multiplied by the state population in the calendar year or such greater or lesser amount as provided by section 42(h) of the Internal Revenue Code of 1986, as amended.

(c) The administration shall adopt rules under chapter 91 necessary to comply with federal and state requirements for determining the amount of the tax credit allowed under section 42 of the Internal Revenue Code of 1986, as amended, and section 235-110.8. The administration may establish and collect reasonable fees for administrative expenses incurred in providing the services required by this section, including fees for processing developer applications for the credit. All fees collected for administering these provisions, including developer application fees, shall be used to cover the administrative expenses of the administration.

(d) All claims for allocation of the low-income housing credit under section 235-110.8 shall be filed with the administration. The administration shall determine the amount of the credit allocation, if necessary, and return the claim to the taxpayer.

The taxpayer shall file the credit allocation with the taxpayer's tax return with the department of taxation.

§ **-16 Administration of federal programs.** (a) The administration may carry out federal programs designated to be carried out by a housing finance or housing development entity.

(b) The administration shall adopt necessary rules in accordance with chapter 91, including the establishment and collection of reasonable fees for administering the program, to carry out any federal program in subsection (a).

(c) All fees collected for administering the program may be deposited into an appropriate special fund of the administration and may be used to cover the administrative expenses of the administration.

§ **-17 Federal funds outside of state treasury.** Notwithstanding chapter 38, the administration may establish and manage federal funds outside of the state treasury to be used for federal housing programs. The administration shall invest those funds in permitted investments in accordance with chapter 36.

§ **-18 Public works contracts.** The administration may make, execute, and carry out contracts for, or in connection with, any housing project in the manner provided under chapter 103D and section 103-53; provided that with regard to the contracts, the term "officers", as used in chapter 103D, shall mean the administration or officer authorized by the administration to act as its contracting officer. Unless made and executed in the name of the State, each contract made and executed as authorized in this section shall state therein that it is so made and executed.

§ **-19 Remedies of an obligee: mandamus; injunction; possessory action; receiver; accounting; etc.** An obligee of the administration shall have the right, in addition to all other rights that may be conferred on the obligee subject only to any contractual restrictions binding upon the obligee, and subject to the prior and superior rights of others:

- (1) By mandamus, suit, action, or proceeding in law or equity to compel the administration, and the members, officers, agents, or employees thereof to perform each and every item, provision, and covenant contained in any contract of the corporation, and to require the carrying out of any or all covenants and agreements of the administration and the fulfillment of all duties imposed upon the administration by this chapter;
- (2) By suit, action, or proceeding in equity to enjoin any acts or things that may be unlawful, or the violation of any of the rights of the obligee of the administration;
- (3) By suit, action, or proceeding in any court of competent jurisdiction to cause possession of any housing project or any part thereof to be surrendered to any obligee having the right to possession pursuant to any contract of the administration;
- (4) By suit, action, or proceeding in any court of competent jurisdiction, upon the happening of an event of default (as defined in a contract of the administration), to obtain the appointment of a receiver of any housing project of the administration or any part or parts thereof, and if the receiver is appointed, the receiver may enter and take possession of the housing project or any part or parts thereof and operate and maintain same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom in the same manner as the administration itself might do and shall keep the moneys in a separate account

or accounts and apply the same in accordance with the obligations of the administration as the court shall direct; and

- (5) By suit, action, or proceeding in any court of competent jurisdiction to require the administration and the members thereof to account as if it and they were the trustees of an express trust.

§ **-20 Subordination of mortgage to agreement with government.** The administration may agree in any mortgage made by it that the mortgage shall be subordinate to a contract for the supervision by a governmental agency of the operation and maintenance of the mortgaged property and the construction of improvements thereon. In that event, any purchaser or purchasers at a sale of the property of the administration pursuant to a foreclosure of the mortgage or any other remedy in connection therewith shall obtain title subject to the contract.

§ **-21 Duty to make reports.** Except as otherwise provided by law, the administration shall:

- (1) File at least once a year with the governor a report of its activities for the preceding fiscal year;
- (2) Report to the state comptroller on moneys deposited in depositories other than the state treasury under section 40-81 and rules adopted thereunder; and
- (3) Submit an annual report to the legislature on all administration program areas and funds organized by program area, and by fund within each program area, no later than twenty days prior to the convening of each regular session, which shall provide the following information on the status of its programs and finances:
  - (A) A description of programs being developed in the current fiscal biennium, including a summary listing of the programs, the status of each program, the methods of project financing or loans, and other information deemed significant;
  - (B) A description of programs planned for development during the two ensuing fiscal bienniums, including a summary listing of the proposed programs, the methods of project financing or loans, and other information deemed significant;
  - (C) A status report of actual expenditures made in the prior completed fiscal year from each fund established under this chapter, estimated expenditures anticipated for the current fiscal year, and projected expenditures for the ensuing fiscal years to be described in relation to specific projects developed to implement the purposes of any program or fund established under this chapter;
  - (D) A financial audit and report conducted on an annual basis by a certified public accounting firm; and
  - (E) Recommendations with reference to any additional legislation or other action that may be necessary to carry out the purposes of this part.

§ **-22 Quitclaim deeds.** Unless otherwise provided by law, the administration shall issue quitclaim deeds and leases whenever it conveys, transfers, sells, or assigns any property developed, constructed, or sponsored under this chapter.’’

## PART VI

SECTION 21. The functions of the housing and community development corporation of Hawaii described in subpart F of part II of chapter 201G, Hawaii

Revised Statutes, relating to state housing programs, and part III of chapter 201G, Hawaii Revised Statutes, relating to financing programs, except for subparts D and M, shall be transferred to the Hawaii housing finance and development administration.

**SECTION 22. Transfer of officers and employees.** All rights, powers, functions, and duties of the housing and community development corporation of Hawaii under subpart F of part II of chapter 201G, Hawaii Revised Statutes, relating to state housing programs and part III of chapter 201G, Hawaii Revised Statutes, relating to financing programs, except for subparts D and M, are transferred to the Hawaii housing finance and development administration.

All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

No officer or employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act, and such officer or employee may be transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed; and provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

An officer or employee of the State who does not have tenure and who may be transferred or appointed to a civil service position as a consequence of this Act shall become a civil service employee without the loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges and without the necessity of examination; provided that such officer or employee possesses the minimum qualifications for the position to which transferred or appointed.

If an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department or the governor.

**SECTION 23. Transfer of records, equipment, and other personal property.** All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the housing and community development corporation of Hawaii relating to the functions transferred to the Hawaii housing finance and development administration shall be transferred with the functions to which they relate.

**SECTION 24. Transfer of functions; continuity of rules, policies, and other material.** All rules, policies, procedures, guidelines, and other material adopted or developed by the housing and community development corporation of Hawaii to implement provisions of the Hawaii Revised Statutes that are made applicable to the Hawaii housing finance and development administration by this Act, shall remain in full force and effect until amended or repealed by the Hawaii housing finance and development administration, pursuant to chapter 91, Hawaii Revised Statutes.

In the interim, every reference to the housing and community development corporation of Hawaii or the executive director of the housing and community development corporation of Hawaii in those rules, policies, procedures, guidelines, and other material is amended to refer to the Hawaii housing finance and development administration or the executive director of the Hawaii housing finance and development administration, as appropriate.

**SECTION 25. Transfer of functions; effect on deeds, permits, and other documents.** All deeds, leases, contracts, loans, agreements, permits, or other documents executed or entered into by or on behalf of the housing and community development corporation of Hawaii or the housing finance and development corporation pursuant to the Hawaii Revised Statutes, which are made applicable to the Hawaii housing finance and development administration by this Act, shall remain in full force and effect.

Effective on the same day that legislation transferring the functions of the housing and community development corporation of Hawaii to the Hawaii housing finance and development administration is approved, every reference to the housing and community development corporation of Hawaii or the executive director of the housing and community development corporation of Hawaii therein shall be construed as a reference to the Hawaii housing finance and development administration or the executive director of the Hawaii housing finance and development administration, as appropriate.

**SECTION 26.** (a) All references to the "housing and community development corporation of Hawaii", or "corporation", or similar terms as the case may be in chapter 201G, and sections 27-11, 53-6, 76-16, 209-16(b), 290-1(b), 290-8, and 521-7, Hawaii Revised Statutes, shall be amended to "Hawaii public housing administration", "administration", or similar terms, as the case may be, as the context requires.

(b) All references to the "housing and community development corporation of Hawaii", or "corporation", or similar terms as the case may be in chapter 516, and sections 10-2, 10-13.6, 36-24, 46-15.1, 53-17, 53-22(e), 111-8, 111-9, 171-2, 171-18.5, 171-50.2, 206E-15, 209-16(a), 209-17, 237-29, 290-1(c), 519-2(b), and 519-3(b), Hawaii Revised Statutes, shall be amended to "Hawaii housing finance and development administration", "administration", or similar terms, as the case may be, as the context requires.

PART VII

**SECTION 27.** Section 201G-3, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) There is created a board consisting of nine members, of whom ~~[six]~~ eight shall be public members appointed by the governor as provided in section 26-34. Public members shall be appointed from each of the counties of Honolulu, Hawaii, Maui, and Kauai. ~~[One public member shall be the chairperson of the rental housing trust fund advisory commission.]~~ At least one public member shall be a person who is directly assisted by the corporation under the federal low-rent public housing or federal section 8 tenant-based housing assistance payments program while serving on the board. The public members of the board shall serve four-year staggered terms; provided that the initial appointments shall be as follows: ~~[two]~~ three members to be appointed for four years; two members to be appointed for three years; and ~~[one member]~~ three members to be appointed for two years. ~~[The chairperson of the rental housing trust fund advisory commission shall serve a concurrent term on the board.]~~ The director ~~[of business, economic development, and tourism and the director]~~ of human services, or ~~[their designated representatives, and a representative of the governor's office,]~~ a designated representative, shall be ~~an ex officio voting [members.] member.~~ The corporation shall be headed by the board.

(b) The board of directors shall select a chairperson and vice-chairperson from among its members. The ~~[director of business, economic development, and tourism or the]~~ director of human services shall be ineligible to serve as chairperson of the board."

SECTION 28. Section 201G-15, Hawaii Revised Statutes, is amended to read as follows:

**“§201G-15 Administration of federal programs.** (a) The [corporation] administration may carry out federal programs designated to be carried out by a [~~housing finance entity, housing development entity,~~] public housing agency, or entity designated by the [~~corporation,~~] administration.

(b) The [~~corporation,~~] administration shall adopt necessary rules in accordance with chapter 91, including the establishment and collection of reasonable fees for administering the program, to carry out any federal program in subsection (a).

(c) All fees collected for administering the program may be deposited into an appropriate special fund of the [~~corporation,~~] administration and may be used to cover the administrative expenses of the [~~corporation,~~] administration.”

SECTION 29. Sections 201G-7 and 201G-8, Hawaii Revised Statutes, are repealed.

SECTION 30. Section 201G-14, Hawaii Revised Statutes, is repealed.

#### PART VIII

SECTION 31. Section 201G-431, Hawaii Revised Statutes, is amended by deleting the definition of “advisory commission”.

[~~““Advisory commission” means the rental housing trust fund advisory commission established by this subpart.”~~]

SECTION 32. Sections 201G-433 and 201G-434, Hawaii Revised Statutes, are repealed.

SECTION 33. Section 201G-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is created a board consisting of nine members, of whom six shall be public members appointed by the governor as provided in section 26-34. Public members shall be appointed from each of the counties of Honolulu, Hawaii, Maui, and Kauai. [~~One public member shall be the chairperson of the rental housing trust fund advisory commission.~~] One member shall be a person appointed from a list of nominees submitted by the continuum of care systems of each county. Each county continuum of care system shall submit three nominees. For the purposes of this subsection, “continuum of care system” shall have the same meaning as in title 24, Code of Federal Regulations, section 586.5. At least one public member shall be a person who is directly assisted by the corporation under the federal low-rent public housing or federal section 8 tenant-based housing assistance payments program while serving on the board. The public members of the board shall serve four-year staggered terms; provided that the initial appointments shall be as follows: two members to be appointed for four years; two members to be appointed for three years; and one member to be appointed for two years. [~~The chairperson of the rental housing trust fund advisory commission shall serve a concurrent term on the board.~~] The director of business, economic development, and tourism and the director of human services, or their designated representatives, and a representative of the governor’s office, shall be ex officio voting members. The corporation shall be headed by the board.”

PART IX

SECTION 34. The legislature finds that the urgency of the affordable housing shortage situation in Hawaii requires that the State, in addition to developing long-range plans, develop more immediate solutions that can be implemented in the near future to help ease Hawaii's housing shortage and the needs of the homeless. The purpose of this part is to establish a joint legislative affordable housing and homeless task force.

SECTION 35. (a) There is established a joint legislative housing and homeless task force in the senate and house of representatives to further identify near-term solutions to Hawaii's affordable housing and homeless problem. The task force shall be exempt from chapter 92, Hawaii Revised Statutes.

(b) The task force shall consist of eight members to be appointed without regard to section 26-34, Hawaii Revised Statutes, of which four members shall be appointed by the president of the senate and four members shall be appointed by the speaker of the house of representatives. The task force shall be co-chaired by the chair of the senate committee on commerce, consumer protection and housing and the chair of the house of representatives committee on housing.

(c) The task force may determine, among other things:

- (1) The inventory of all state lands used for low-income and public housing, the condition of public housing units on the lands, and whether other state lands and properties are available and suitable for the development of transitional shelters for the homeless or low-income rental housing;
- (2) The inventory and condition of all public and private low-income rental housing units;
- (3) The number of decommissioned units still in existence and if those units could possibly be used for low-income rental housing or homeless shelters if they are repaired or renovated;
- (4) Strategies for public partnerships with private and nonprofit entities to renovate housing units and develop low-income rental housing and homeless facilities;
- (5) Strategies and incentives for public partnerships with private and nonprofit entities to develop moderate-income affordable ownership homes and lower-income rental units;
- (6) Strategies to streamline the permitting and approval process and address infrastructure barriers to development of new housing projects;
- (7) The role the land use commission should play in the approval process for affordable housing projects; and
- (8) Other matters relating to housing and the homeless that the task force deems appropriate.

(f)<sup>3</sup> The task force may also act in an oversight capacity and conduct a review of and hold public hearings on the performance and operations of the housing and development corporation of Hawaii.

(e) The task force shall submit a report of its findings and recommendations to the legislature no later than twenty days prior to the convening of the regular session of 2006.

(f) The task force may request assistance from appropriate state agencies in fulfilling the purposes of the task force.

PART X

SECTION 36. Notwithstanding any other law to the contrary, if prior to July 1, 2007, the United States Department of Housing and Urban Development declares



the housing and community development corporation of Hawaii to be in substantial default of the Memorandum of Understanding dated September 30, 2004, the responsibility and administration of funds described under sections 201G-153, 201G-170, 201G-170.5, 201G-223, 201G-411, and 201G-432, Hawaii Revised Statutes, shall be transferred from the housing and community development corporation of Hawaii to the department of budget and finance to fulfill the purposes of those funds. Within ten days of the United States Department of Housing and Urban Development's declaration of the housing and community development corporation of Hawaii's substantial default, the governor shall:

- (1) Inform the president of the senate, the speaker of the house of representatives, and the acting director of the legislative reference bureau of the declaration and the date upon which the transfer of functions from the housing and community development corporation of Hawaii to the department of budget and finance will take effect; and
- (2) Issue a public notice pursuant to section 1-28.5, Hawaii Revised Statutes, regarding the declaration and the transfer of responsibilities to the department of budget and finance.

SECTION 37. Section 201G-14, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§201G-14**~~]]~~ **Administration of low-income housing credit allowed under section 235-110.8.** (a) The ~~[corporation]~~ department of budget and finance is designated as the state housing credit agency to carry out section 42(h) (with respect to limitation on aggregate credit allowable with respect to a project located in a state) of the Internal Revenue Code of 1986, as amended. As the state housing credit agency<sup>4</sup> for purposes of this section, the ~~[corporation]~~ department of budget and finance shall determine the eligibility basis for a qualified low-income building, make the allocation of housing credit dollar amounts within the State, and determine the portion of the State's housing credit ceiling set aside for projects involving qualified nonprofit organizations. The ~~[corporation]~~ department of budget and finance shall file any certifications and annual reports required by section 42 (with respect to low-income housing credit) of the Internal Revenue Code of 1986, as amended.

(b) The state aggregate housing credit dollar amount shall be allocated annually as required by section 42 of the Internal Revenue Code of 1986, as amended by the ~~[corporation]~~ department of budget and finance in an amount equal to \$1.25 multiplied by the state population in the calendar year or such greater or lesser amount as provided by section 42(h) of the Internal Revenue Code of 1986, as amended.

(c) The ~~[corporation]~~ department of budget and finance shall adopt rules under chapter 91 necessary to comply with federal and state requirements for determining the amount of the tax credit allowed under section 42 of the Internal Revenue Code of 1986, as amended and section 235-110.8. The ~~[corporation]~~ department of budget and finance may establish and collect reasonable fees for administrative expenses incurred in providing the services required by this section, including fees for processing developer applications for the credit. All fees collected for administering these provisions, including developer application fees, shall be deposited into the ~~[corporation's]~~ housing finance revolving fund ~~[to be used to cover the administrative expenses of the corporation]~~.

(d) All claims for allocation of the low-income housing credit under section 235-110.8 shall be filed with the ~~[corporation.]~~ department of budget and finance. The ~~[corporation]~~ department of budget and finance shall determine the amount of the credit allocation, if necessary, and return the claim to the taxpayer. The taxpayer shall file the credit allocation with the taxpayer's tax return with the department of taxation.’”

PART XI

SECTION 38. The housing and community development corporation of Hawaii shall prepare an implementation plan for the reorganization of the State's housing functions as required under this Act and shall submit a report to the legislature not later than twenty days prior to the convening of the 2006 regular session. The report shall include but not be limited to the corporation's implementation plan, recommendations for any additional statutory amendments that may be necessary to fully effectuate the implementation plan and the purposes of this Act, and proposed legislation containing the recommended statutory amendments.

PART XII

SECTION 39. If any part of this Act is found to be in conflict with federal requirements that are a prescribed condition for the allocation of federal funds to the State, the conflicting part of this Act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this Act in its application to the agencies concerned. The rules under this Act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the State.

SECTION 40. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>5</sup>

SECTION 41. This Act shall take effect on July 1, 2005; provided that:

- (1) Sections 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30 shall take effect on July 1, 2006;
- (2) Section 37 shall take effect upon the date specified by the governor pursuant to the notice provided under section 36 of this Act if, prior to July 1, 2007, the United States Department of Housing and Urban Development declares the housing and community development corporation of Hawaii to be in substantial default of the Memorandum of Understanding dated September 30, 2004;
- (3) Sections 36 and 37 shall be repealed on July 1, 2007; and
- (4) Section 5 shall be repealed on June 30, 2010, and section 201G-432, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act.

(Approved July 6, 2005.)

Notes

1. Should be bracketed.
2. Act 178.
3. Should be subsection (d).
4. "Agency" should not be underscored.
5. Edited pursuant to HRS §23G-16.5.

ACT 197

H.B. NO. 931

A Bill for an Act Relating to Affordable Housing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the cost of living in Hawaii has been and continues to be high. A significant contributing factor to the high cost of living in

Hawaii is the high cost of housing, and it is the high cost of land that contributes significantly to the high cost of housing. Land, in common with other natural resources, is a finite resource, a fact particularly obvious in Hawaii. The shortage in the supply of land leads to higher land prices and housing costs, and creates a situation in which land is developed for higher-priced housing rather than affordable housing.

The Hawaii Land Reform Act, chapter 516, Hawaii Revised Statutes, was enacted to afford residential lessees of fee simple title to the leased fee reversionary interest in single family residential leasehold lots. The constitutionality of chapter 516, Hawaii Revised Statutes, was upheld by the United States Supreme Court in *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984), and by the Hawaii Supreme Court in *Hawaii Housing Authority v. Lyman*, 68 Haw. 55, 704 P.2d 888 (1985). In these cases, the courts held that a legitimate public purpose for leasehold condemnation legislation existed, and the use of the power of eminent domain to accomplish this purpose was constitutional.

Since the *Midkiff* and *Lyman* cases were decided in 1984 and 1985, respectively, development and sale of single-family and multifamily housing on a leasehold basis has ceased for all practical purposes in Hawaii. The median price of a single-family home on the island of Oahu has increased to \$495,000 in December 2004. In contrast, under the housing and community development corporation of Hawaii's affordable housing guidelines for 2004, the sales price of a house affordable to a family of four with the median income of \$65,700 is \$276,200. There is a growing shortage of housing in Hawaii affordable to the general workforce, specifically, those families earning between approximately fifty to one hundred forty per cent of area median income. Workforce housing is affordable housing for which a priority is given in the marketing of such housing to employees, retirees, or members of the landowner or of an affiliate of the landowner; employees or retirees of governmental agencies or departments; seniors; and other low- and moderate-income households.

The legislature further finds that in addition to inflation, one factor attributed to the increased costs of both new single-family and multifamily housing in Hawaii is the cost of land and site improvements, since these costs must be paid at the time of initial sale. One means of increasing the supply and decreasing the price of housing in Hawaii is to develop projects on a leasehold rather than a fee simple basis. If for-sale housing were developed on a long-term leasehold basis, land costs could be capitalized over the term of the lease. Moreover, selling a house on a leasehold basis permits the lessor to control the potential appreciation on the housing over the long term, thereby sustaining the affordable price of the housing for subsequent buyers.

It is in the public interest for landowners to facilitate the creation of affordable housing and workforce housing. Selling affordable housing and workforce housing on a leasehold basis will help curb inflation and will keep the cost of housing at a level that will enable low- and moderate-income families to afford a decent and healthful standard of living. Major employers should be encouraged to attract workers by selling the leasehold residences for less than appraised value and with a capitalized lease rent that is less than a fair market return as a form of housing subsidy.

A lessor's sharing in a percentage of the appreciation on the resale of an affordable residential lot may be construed as lease rent for purposes of chapter 519, Hawaii Revised Statutes. Landowners and lessors will only lease land to be developed for affordable leasehold residential lots with a less than fair market return if these lots are excluded from leasehold conversion and ground lease rent control.

The legislature further finds that, because of the built-up nature of the surrounding neighborhoods, the development of workforce housing and affordable housing by the University of Hawaii at Manoa is a matter of statewide concern. Accordingly, the exemptions created by this Act are not intended to apply to

workforce housing and affordable housing developed by the University of Hawaii at Manoa at or in the vicinity of the Manoa campus, without further specific authorization from the legislature. The legislature intends, however, that the exemptions created by this Act shall apply to other University of Hawaii campuses on Oahu, including the John A. Burns school of medicine in Kakaako and the University of Hawaii West Oahu campus, as well as to University of Hawaii campuses on the neighbor islands.

The purpose of this Act is to encourage the development of workforce housing and affordable housing on leased residential lots by prohibiting lessees under sustainable affordable leases from exercising rights granted under certain sections of chapters 516 and 519, Hawaii Revised Statutes.

SECTION 2. Chapter 516, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

**“§516-A Exemption for sustainable affordable developments.** Notwithstanding any law to the contrary, no lessee under a sustainable affordable lease may exercise the rights granted to a lessee by part II and sections 516-63, 516-65, and 516-66. The lessee under a sustainable affordable lease may exercise rights under section 516-70; provided that in no event shall compensation to the lessee for on-site improvements at the termination or expiration of the lease term exceed the lessee’s share of the maximum sales price of a residential lot, including all buildings and improvements, on resale as determined pursuant to paragraph (2) of the definition of “sustainable affordable lease” in section 516-1. In addition, sections 516-5 and 516-83 shall not apply to the fee owner and lessor of land in a sustainable affordable development.

**§516-B Certification.** The lessor of a sustainable affordable development shall certify the lessor’s qualification for the exemption established in section 516-A at the time of the delivery of the first sustainable affordable lease by filing an affidavit with the registrar of the bureau of conveyances or assistant registrar of the land court, as appropriate, that:

- (1) Declares the percentage of all the residential lots in the development tract that will have their initial sales prices limited in accordance with directly applicable state or county law, regulation, policy, or agreement, such that households earning not more than the required percentage of the median income for the applicable county will spend no more than the allowable percentage of their gross income for housing costs; provided that if the percentage of residential lots is less than thirty per cent, the state or county agency’s approval thereof shall also be set forth;
- (2) Declares the percentage of all the residential lots in the development tract that will have their initial sales prices and resale sales prices limited to eighty per cent of the fair market value of the residential lots in fee, including all buildings and improvements, unencumbered by the lease and describing the calculation of the difference; provided that if the percentage of residential lots is less than fifty-one per cent, the state or county agency’s approval thereof shall also be set forth; and
- (3) Sets forth the provisions in the sustainable affordable leases that limit the resale price of the residential lot, including all buildings and improvements, and entitle the lessor to a share of the appreciation in the residential lot, including all buildings and improvements.

**§516-C Recordkeeping.** A lessor of a sustainable affordable development shall maintain during the term of all sustainable affordable leases records regarding income levels and other qualifications of buyers of sustainable affordable leases at the time of purchase.

**§516-D University of Hawaii at Manoa.** The legislature identifies the creation of a sustainable affordable development by or on land owned by or set aside to the University of Hawaii at Manoa to be a matter of statewide concern because of the built-up nature of the surrounding community. The University of Hawaii at Manoa shall not create a sustainable affordable development by entering into any sustainable affordable lease or by authorizing any land owned by or set aside to the University of Hawaii at Manoa to be demised under a sustainable affordable lease prior to enactment of a law specifically authorizing the University of Hawaii at Manoa to enter into a sustainable affordable lease or to demise any land owned by or set aside to the University of Hawaii at Manoa under a sustainable affordable lease.”

SECTION 3. Section 516-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

“‘Sustainable affordable development’ means a development tract that satisfies all of the following requirements:

- (1) The sales price at the time of initial sale of at least thirty per cent of all the residential lots in the development tract shall be limited in accordance with directly applicable state or county law, regulation, policy, or agreement, such that households earning not more than the required percentages of the median income for the applicable county (according to the directly applicable law, regulation, policy or agreement) will be required to spend no more than the allowable percentage of their gross incomes for housing costs as determined by secondary mortgage market standards or as otherwise agreed, all as determined as of the time of the initial sale of the residential lots;
- (2) The sales price at the time of the initial sale of at least fifty-one per cent of the residential lots in the development tract, including the lots subject to the requirements of paragraph (1), and the sales price at the time of a resale of at least fifty-one per cent of all the residential lots in the development tract, shall be no higher than eighty per cent of the fair market value of the residential lots in fee at the time of initial sale or resale, as appropriate, including all buildings and improvements, unencumbered by the restrictions of the lease;
- (3) All residential lots sold in satisfaction of paragraph (1) or (2) shall be leased under sustainable affordable leases;
- (4) The state or county agency that approves the sustainable affordable development may reduce the minimum percentage of residential lots to be sold in satisfaction of paragraph (1) or (2) upon a showing that the sustainable affordable development comprises a portion of a housing project that includes other housing, which together with the residential lots comprising the sustainable affordable development, satisfies the state or county agency’s affordable housing requirements as set forth in the applicable state or county law, regulation, policy, or agreement; and
- (5) For the purposes of this chapter, the residential lots in a development tract comprising a sustainable affordable development are not required to be in a single contiguous area as long as all non-contiguous lots are:
  - (A) Within a ten-mile radius of each other; and

(B) Leased by the same fee owner under a sustainable affordable lease.

“Sustainable affordable lease” means a residential lot lease in a sustainable affordable development that satisfies all of the following requirements:

- (1) The lease provides for a consideration to the fee owner below a fair market return on the fair market value of the land; provided that compensation to the fee owner for land, including lease rent, shall be either:
  - (A) Totally capitalized into the initial sales price for the residential lot, including all buildings and improvements; or
  - (B) Partially capitalized with a share of appreciation paid to the lessor upon resale of the residential lot;
- (2) In order to maintain the continued affordability of the residential lot, the lease limits the lessee’s maximum sales price on the residential lot upon resale, including all buildings and improvements, to the lesser of:
  - (A) The fair market value of the residential lot, including all buildings and improvements, encumbered by the restrictions of the lease; or
  - (B) The sum of:
    - (i) The lessee’s purchase price for the residential lot, including all buildings and improvements;
    - (ii) Any appreciation on the residential lot, including all buildings and improvements as measured by multiplying the amount in clause (i) by the increase in the consumer price index for all urban consumers as determined by the United States Department of Labor for the applicable county (or if not published for the county, then for the State), from the date of the purchase to the date of the contract for resale; and
    - (iii) The fair market value of all lessor-approved capital improvements made by the lessee; and
- (3) The lease may allow the lessor to receive a share of the appreciation in accordance with paragraph (2), as agreed to by the lessor and lessee, and as set forth in the sustainable affordable lease.”

SECTION 4. Chapter 519, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§519- Exemption for sustainable affordable developments.** Notwithstanding any other law to the contrary, no lessee under a sustainable affordable lease as defined in section 516-1 and qualified under section 516-B may exercise the rights granted to a lessee under section 519-2.”

SECTION 5. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 6. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect on July 1, 2005.

(Approved July 6, 2005.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 198

S.B. NO. 117

A Bill for an Act Relating to Housing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. In an attempt to meet the housing needs of residents, the legislature enacted Act 15, Session Laws of Hawaii 1988 (Act 15). In part, Act 15 permitted the housing finance and development corporation to enter into agreements with eligible developers to develop badly needed homes by exempting approved projects from all statutes, ordinances, charter provisions, and rules relating to zoning. However, an approved Act 15 project was also required to have not less than sixty per cent of the units in the project be affordable units.

According to the housing and community development corporation of Hawaii, before Act 15 "sunsetted" in 1993, more than sixteen thousand homes were granted approval, but fewer than six hundred were actually constructed. It appears that the vast majority of these homes were not developed due to the sixty per cent affordable housing requirement that made many projects economically unfeasible. However, the approvals for these Act 15 projects remain in effect.

To coordinate and streamline the various state housing programs, the legislature enacted Act 350, Session Laws of Hawaii 1997 (Act 350). Among other things, Act 350 contained a provision similar to one in Act 15 that exempted approved projects with eligible developers from county zoning requirements. However, this similar provision did not contain the sixty per cent affordable housing requirement.

Act 350 transferred all jurisdiction, functions, rights, and powers exercised by the housing finance and development corporation and the Hawaii housing authority to the housing and community development corporation of Hawaii. Act 350 further provided that all contracts, agreements, permits, and other documents executed by the housing finance and development corporation remained applicable to the housing and community development corporation of Hawaii and remained in full force and effect.

Accordingly, while many approved Act 15 projects remain in effect, they are still unable to proceed unless the sixty per cent affordable housing requirement is amended. However, it is uncertain whether the housing and community development corporation of Hawaii has the authority to amend the Act 15 contracts and agreements entered into by the housing finance and development corporation to conform to current statutory requirements.

The purpose of this Act is:

- (1) To expressly authorize the housing and community development corporation of Hawaii to modify and amend contracts and agreements for housing developments previously entered into by the housing finance and development corporation; and
- (2) To allow affordable housing requirements for undeveloped parcels of land in Puukoolii village, a privately-sponsored project in west Maui approved under the provisions of Act 15, to be established by agreement among the housing and community development corporation of Hawaii, the developer, and the appropriate Maui county agency.

SECTION 2. Chapter 201G, Hawaii Revised Statutes, is amended by adding a new section to subpart F of part II to be appropriately designated and to read as follows:

**"§201G- Authority to modify and amend development agreements with eligible developers.** The corporation shall have the power and authority to

## ACT 199

amend, delete, restate, and otherwise modify the terms, conditions, plans, specifications, and all other matters relating, directly or indirectly, to any housing project that was previously approved by the housing finance and development corporation, including, without limitation, the terms, covenants, and conditions of any development agreement for a housing project between the housing finance and development corporation and an eligible developer.”

SECTION 3. Notwithstanding Act 15, Session Laws of Hawaii 1988, the affordable housing requirements for the undeveloped parcels in Puukolii village shall be established by agreement among:

- (1) The developer;
- (2) The housing and community development corporation of Hawaii; and
- (3) The appropriate agency or department of the county of Maui that is charged with the responsibility of administering affordable housing projects, unless such undeveloped parcels are part of a larger development that requires the approval of the Maui county council.

The affordable housing requirement shall include a requirement for housing that is affordable to households earning up to one hundred twenty per cent of the county median income.

The undeveloped parcels in Puukolii village are defined as tax map key numbers 4-4-02: por. 02 and 4-4-06: por. 01.

SECTION 4. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on July 1, 2005.

(Approved July 6, 2005.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 199

H.B. NO. 465

A Bill for an Act Relating to the Boards of Registration.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 11-41, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be four boards of registration: one for the island of Hawaii; one for the islands of Maui, Molokai, Lanai, and Kahoolawe; one for the island of Oahu; and one for the islands of Kauai and Niihau. The boards, which shall be in the ~~[office of the lieutenant governor]~~ department of accounting and general services for administrative purposes, shall consist of three members each and shall be appointed by the governor by and with the advice and consent of the senate; their terms of office shall be four years.”

SECTION 2. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the office of lieutenant governor relating to the functions transferred to the department of accounting and general services shall be transferred with the functions to which they relate.



SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 6, 2005.)

## ACT 200

H.B. NO. 1740

A Bill for an Act Relating to Electronic Voting.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 16-42, Hawaii Revised Statutes, is amended to read as follows:

**“§16-42 Electronic voting requirements.** (a) When used at primary or special primary elections, the automatic tabulating equipment of the electronic voting system shall count only votes for the candidates of one party, or nonpartisans. In all elections, the equipment shall reject all votes for an office when the number of votes therefor exceeds the number ~~[which]~~ that the voter is entitled to cast.

No electronic voting system shall be used in any election unless it generates a paper ballot that may be inspected and corrected by the voter before the vote is cast, and unless every paper ballot is retained as the definitive record of the vote cast.

(b) The chief election officer may rely on electronic tallies created directly by electronic voting systems, in lieu of counting the paper ballots by hand or with a mechanical tabulation system if:

- (1) The electronic voting system is subject to inspection, audit, and experimental testing, by qualified observers, before and after the election, pursuant to administrative rules adopted by the chief election officer under chapter 91;
- (2) No upgrades, patches, fixes, or alterations shall be applied to the system through thirty days after the election;
- (3) The chief election officer conducts a post-election, pre-certification audit of a random sample of not less than ten per cent of the precincts employing the electronic voting system, to verify that the electronic tallies generated by the system in those precincts equal hand tallies of the paper ballots generated by the system in those precincts; and
- (4) If discrepancies appear in the pre-certification audits in paragraph (3), the chief election officer, pursuant to administrative rules, shall immediately conduct an expanded audit to determine the extent of misreporting in the system.”

SECTION 2. Section 19-3, Hawaii Revised Statutes, is amended to read as follows:

**“§19-3 Election frauds.** The following persons shall be deemed guilty of an election fraud:

- (1) Every person who, directly or indirectly, personally or through another, gives, procures, or lends, or agrees or offers to give, procure, or lend, or who endeavors to procure, any money or office or place of employment or valuable consideration to or for any elector, or to or for any person for an elector, or to or for any person in order to induce any elector to

- vote or refrain from voting, or to vote or refrain from voting for any particular person or party, or who does any such act on account of any person having voted or refrained from voting for any particular person at any election;
- (2) Every person who advances or pays, or causes to be paid, any money to, or to the use of, any other person, with the intent that the money, or any part thereof, shall be expended in bribery at any election, or for any purpose connected with or incidental to any election; or who knowingly pays or causes to be paid any money to any person in the discharge or repayment of any money wholly or partly expended in bribery at any election, or for any purpose connected with or incidental to any election;
  - (3) Every elector who, before, during or after any election, directly or indirectly, personally or through another, receives, agrees, or contracts for any money, gift, loan, or valuable consideration, office, place, or employment for oneself or any other person for voting or agreeing to vote, or for refraining to vote or agreeing to refrain from voting, or for voting or refraining to vote for any particular person or party;
  - (4) Every person who, directly or indirectly, personally or through another, makes use of, or threatens to make use of, any force, violence, or restraint; or inflicts or threatens to inflict any injury, damage, or loss in any manner, or in any way practices intimidation upon or against any person in order to induce or compel the person to vote or refrain from voting, or to vote or refrain from voting for any particular person or party, at any election, or on account of the person having voted or refrained from voting, or voted or refrained from voting for any particular person or party; or who by abduction, distress, or any device or contrivance impedes, prevents, or otherwise interferes with the free exercise of the elective franchise;
  - (5) Every person who, at any election, votes or attempts to vote in the name of any other person, living or dead, or in some fictitious name, or who, having once voted, votes or attempts to vote again, or knowingly gives or attempts to give more than one ballot for the same office at one time of voting;
  - (6) Every person who, before or during an election, knowingly publishes a false statement of the withdrawal of any candidate at the election;
  - (7) Every person who induces or procures any person to withdraw from being a candidate at an election in consideration of any payment or gift or valuable consideration; or of any threat; and every candidate who withdraws from being a candidate in pursuance of such inducement or procurement;
  - (8) Every public officer by law required to do or perform any act or thing with reference to any of the provisions in any law concerning elections who wilfully fails, neglects, or refuses to do or perform the same, or who is guilty of any wilful violation of any of the provisions thereof; [and]
  - (9) Any person wilfully tampering or attempting to tamper with, disarrange, deface, or impair in any manner whatsoever, or destroy any voting machine while the same is in use at any election, or who, after the machine is locked in order to preserve the registration or record of any election made by the same, tampers or attempts to tamper with any voting machine[-]; and
  - (10) Every person who, directly or indirectly, personally or through another, wilfully designs, alters, accesses, or programs any electronic voting

system to cause the system to inaccurately record, tally, or report votes cast on the electronic voting system.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 6, 2005.)

## ACT 201

H.B. NO. 1712

A Bill for an Act Relating to Elections.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 11-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Notwithstanding chapters 103 and 103D, the chief election officer may contract with community organizations, school booster clubs, and nonprofit organizations for the provision and compensation of precinct officials and other election related personnel, services, and activities; provided that to be eligible to enter into a contract, the organization or club shall have received a tax clearance certificate from the department of taxation[-] and shall not be a political action committee or organized for a political purpose.”

SECTION 2. Section 11-14, Hawaii Revised Statutes, is amended to read as follows:

“**§11-14 General county register; restrictions in use.** (a) The clerk of each county shall register all the voters in the clerk’s county in the general county register. The register shall contain the name and address of each voter unless [sueh] the voter’s address is deemed confidential pursuant to section 11-14.5. Additional information required by section 11-15 may be included in the register at the discretion of the clerk. The voter’s name shall be maintained alphabetically in the register and be capable of segregation by precinct and representative district. The clerk shall keep the original or photographic copy of the affidavit of registration required by section 11-15. The general county register shall be available for election or government purposes only in accordance with section 11-97.

(b) The affidavits filed under section 11-15 and the general county register may be copied, and the clerk may release voter lists and tabulating cards or computer tapes containing data furnished in the affidavit; provided that information furnished in the affidavits, register, voter lists, cards, or tapes, shall be copied or released for election or government purposes only in accordance with section 11-97.

(c) Voter registration information [whieh] that is collected and maintained by the clerk of each county may be transmitted to a central file for the purpose of correlating registration data to prevent or detect duplicate voter registrations and for the compilation of election reports.

(d) The clerk of each county shall maintain records by computer tape or otherwise of office of Hawaiian affairs registered voters to facilitate their identification as a separate category of voters.

(e) Unless authorized under section 11-97, it shall be unlawful for any person to use, print, publish, or distribute any voter registration information acquired directly or indirectly from the voter registration affidavits or any list prepared therefrom. Any person who is designated by the clerk to register voters and collect voter registration affidavits shall be advised of the provisions of this subsection. Any person who violates this subsection shall be guilty of a misdemeanor.”

SECTION 3. Section 11-72, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In assigning the precinct officials, the following criteria shall be followed:

- (1) The precinct officials shall be registered voters of the precinct in which they serve; but if qualified persons in the precinct or representative district are not readily available to serve, they may be chosen from without the precinct or representative district, or if qualified persons either in or without the precinct or representative district are not available to serve, the chief election officer may designate precinct officials who are not registered voters if the persons so designated are otherwise qualified and shall have attained the age of sixteen years on or before June 30, of the year of the election in which they are appointed to work[-];
- (2) The chief election officer may designate more precinct officials than are needed in order to create a pool of qualified precinct officials who may be assigned to fill vacancies or to perform ~~such~~ their duties as needed in any precinct[-];
- (3) No parent, spouse, reciprocal beneficiary, child, or sibling of a candidate shall be eligible to serve as a precinct official in any precinct in which votes may be cast for the candidate; nor shall any candidate for any elective office be eligible to serve as a precinct official in the same election in which the person is a candidate. No candidate who failed to be nominated in the primary or special primary election shall be eligible to serve as a precinct official in the general election next following[-]; and
- (4) The chairperson of the precinct officials shall be of the same party as the governor and shall be the first named precinct official on the list prepared by the chief election officer. The remainder of the precinct officials shall be apportioned as follows:
  - (A) The total votes cast, except those cast for nonpartisan candidates, for all of the following offices ~~which~~ that were on the ballot in the next preceding general election shall be divided into the total votes cast for all the candidates of each party for ~~such~~ these offices: president and vice-president, United States senator, United States representative, governor and lieutenant governor, state senator, and state representative[-];
  - (B) ~~In the event that~~ If a party’s proportion of votes cast exceeds fifty per cent, its share shall be one-half of the precinct officials. The remaining one-half shall be divided among the remaining parties in proportion to their respective total of votes cast for the offices set forth in subparagraph (A)[-];
  - (C) In the case of the above division resulting in parties having fractional positions, a whole position shall go to the party with the larger number of votes cast[-]; and

- (D) Newly qualified parties may be assigned up to ten per cent of the total positions available at the discretion of the chief election officer.”

SECTION 4. Section 11-77, Hawaii Revised Statutes, is amended as follows:  
1. By amending subsection (a) to read:

“(a) Each qualified political party shall be entitled to appoint no more than one watcher who may be present at any time in each precinct and absentee polling place in which the candidates of ~~[such]~~ that political party are on the ballot. Each party shall submit its list of watchers not later than 4:30 p.m. on the tenth day prior to any election to the chief election officer or to the clerk in county elections. All watchers shall serve without expense to the State or county. All watchers so appointed shall be registered voters. No person shall serve as a watcher who could not qualify to serve as a precinct official under section 11-72(3).”

2. By amending subsection (c) to read:

“(c) All watchers for precincts shall be permitted to observe the conduct of the election in the precinct. The watchers may remain in the precinct as long as the precinct is in operation subject to section 19-6. Watchers may review the polling book pursuant to section 11-97.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 6, 2005.)

ACT 202

H.B. NO. 460

A Bill for an Act Relating to the Civil Service.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to clarify that the chief election officer may hire individuals who are or are not subject to civil service, and who are excluded from collective bargaining, at the chief election officer’s discretion.

SECTION 2. Section 11-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Pursuant to section 11-1.55, the chief election officer may employ a staff with or without regard to [chapters] chapter 76 at the discretion of the chief election officer, and without regard to chapter 89 and section 28-8.3. The office of elections staff may~~], but shall not be limited to supervising]~~:

- (1) Supervise state elections; ~~[maximizing]~~
- (2) Maximize registration of eligible voters throughout the State; ~~[maintaining]~~
- (3) Maintain data concerning registered voters, elections, apportionment, and districting; and ~~[to performing]~~
- (4) Perform other duties as prescribed by law.

The chief election officer or county clerk may employ precinct officials and other election employees as the chief election officer or county clerk may find necessary, none of whom shall be subject to chapters 76 and 89.”

## ACT 203

SECTION 3. Section 89-6, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) The following individuals shall not be included in any appropriate bargaining unit or be entitled to coverage under this chapter:

- (1) Elected or appointed official;
- (2) Member of any board or commission;
- (3) Top-level managerial and administrative personnel, including the department head, deputy or assistant to a department head, administrative officer, director, or chief of a state or county agency or major division, and legal counsel;
- (4) Secretary to top-level managerial and administrative personnel under paragraph (3);
- (5) Individual concerned with confidential matters affecting employee-employer relations;
- (6) Part-time employee working less than twenty hours per week, except part-time employees included in unit (5);
- (7) Temporary employee of three months' duration or less;
- (8) Employee of the executive office of the governor or a household employee at Washington Place;
- (9) Employee of the executive office of the lieutenant governor;
- (10) Employee of the executive office of the mayor;
- (11) Staff of the legislative branch of the State;
- (12) Staff of the legislative branches of the counties, except employees of the clerks' offices of the counties;
- (13) Any commissioned and enlisted personnel of the Hawaii national guard;
- (14) Inmate, kokua, patient, ward or student of a state institution;
- (15) Student help;
- (16) Staff of the Hawaii labor relations board; [~~or~~]
- (17) Employees of the Hawaii national guard youth challenge academy[.];  
or
- (18) Employees of the office of elections.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 6, 2005.)

## ACT 203

H.B. NO. 1747

A Bill for an Act Relating to Campaigns.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 11, Hawaii Revised Statutes, is amended by adding three<sup>1</sup> new sections to subpart B of part XII to be appropriately designated and to read as follows:

“**§11-A Prohibition of fundraising on state or county property.** (a) Except as provided in subsection (b), it shall be unlawful for any person to solicit a

donation of money or other thing of value in connection with an election campaign in a government facility that is used for the discharge of official duties by an officer or employee of the State or county.

(b) The prohibition of fundraising on state or county property shall not apply to any government facility that permits use by nongovernmental organizations for a fee or with reservations; provided the governmental facility's use regulations do not prohibit political activities on the premises. Government facilities that permit use for political activities shall be available to a candidate or committee for fundraising activities pursuant to the same terms and conditions that would otherwise apply to use by nongovernmental organizations.

(c) A person who violates the prohibition of fundraising on state or county property shall be guilty of a misdemeanor.

**§11-B Limit on contributions from nonresident individuals and persons.**

Contributions from any individual or any person as defined in section 11-191, except for a member of the candidate's immediate family, who is not a resident of the State at the time the contributions are made, including a noncandidate committee organized under the laws of another state and whose participants are not residents of the State, shall not exceed twenty per cent of the total contributions received by a candidate or candidate's committee for each reporting period."

SECTION 2. Section 11-191, Hawaii Revised Statutes, is amended as follows:

1. By adding five new definitions to be appropriately inserted and to read:

"Clearly identified" means the name, photograph or other similar image, or other unambiguous identification of the candidate.

"Independent expenditure" means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate and that is not made in concert or cooperation with or at the request or suggestion of the candidate, the candidate's committee, a party, or their agents.

"Residual funds" or "surplus funds" means unspent money from contributions held by a candidate or committee after a general or special election and after all campaign expenditures have been paid for the election period.

"Separate segregated fund" means a noncandidate committee that is established by a state or national bank, a corporation, or a labor organization for the purpose of making contributions or expenditures to influence the nomination for election or the election of any candidate to political office, or for or against any issue on the ballot.

"Surplus funds" has the same meaning as "residual funds"."

2. By amending the definitions of "candidate's committee" and "non-candidate committee" to read:

"Candidate's committee" means a committee as defined in this section which makes an expenditure or accepts a contribution in behalf of a candidate with the candidate's authorization. A candidate shall have only one authorized candidate's committee.

"Noncandidate committee" means a committee as defined in this section [and] that has the purpose of making contributions or expenditures to influence the nomination for election, the election of any candidate to political office, or for or against any issue on the ballot, but does not include a candidate's committee."

SECTION 3. Section 11-193, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) The duties of the commission under this subpart are:
- (1) To develop and adopt reporting forms required by this subpart;
  - (2) To adopt and publish a manual for all candidates and committees, describing the requirements of this subpart, including uniform and simple methods of recordkeeping;
  - (3) To preserve all reports required by this subpart for at least ten years from the date of receipt;
  - (4) To permit the inspection, copying, or duplicating of any report required by this subpart pursuant to rules adopted by the commission; provided that no information or copies from the reports shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose;
  - (5) To ascertain whether any candidate, committee, or party has failed to file a report required by this subpart or has filed a substantially defective or deficient report, and to notify these persons by first class mail that their failure to file or filing of a substantially defective or deficient report must be corrected and explained. The correction or explanation shall be submitted in writing to the commission not later than 4:30 p.m. on the fifth day after notification of the failure to file or deficiency has been mailed to these persons. The commission shall publish in the newspaper, and on its website, the names of all candidates, committees, and parties who have failed to file a report or to correct their deficiency within the time allowed by the commission. Failure to file or correct a report when due, as required by this subpart, shall result in a penalty of \$50. Failure to respond after a newspaper notification or website publication shall result in an additional penalty of \$50 for each day a report remains overdue or uncorrected. All penalties collected under this section shall be deposited in the Hawaii election campaign fund;
  - (6) To hold public hearings;
  - (7) To investigate and hold hearings for receiving evidence of any violations;
  - (8) To adopt a code of fair campaign practices as a part of its rules;
  - (9) To establish rules pursuant to chapter 91;
  - (10) To request the initiation of prosecution for the violation of this subpart pursuant to section 11-229;
  - (11) To administer and monitor the distribution of public funds under this subpart;
  - (12) To suggest accounting methods for candidates, parties, and committees, as the commission may deem advisable, in connection with reports and records required by this subpart;
  - (13) To employ or contract, without regard to chapters 76 and 89 and section 28-8.3, and, at pleasure, to dismiss persons it finds necessary for the performance of its functions, including a full-time executive director, and to fix their compensation;
  - (14) To do random audits, field investigations, as necessary;
  - (15) To file for injunctive relief when indicated;
  - ~~[(16) To censure any candidate who fails to comply with the code of fair campaign practices;] and~~
  - [(17)] (16) To render advisory opinions upon the request of any candidate, candidate committee, noncandidate committee, or other person or entity subject to this chapter, as to whether the facts and circumstances of a particular case constitute or will constitute a violation of the campaign spending laws. If no advisory opinion is rendered within



ninety days after all information necessary to issue an opinion has been obtained, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of the campaign spending laws. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the candidate, candidate committee, noncandidate committee, or other person or entity subject to this chapter, who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by the persons in the request for an advisory opinion.”

SECTION 4. Section 11-194, Hawaii Revised Statutes, is amended to read as follows:

“**§11-194 Registration.** (a) Each candidate, committee, or party shall file an organizational report as set forth in section 11-196[;] or [section] 11-196.5 as applicable[~~, within ten days from the date a candidate or candidate committee receives any contributions or makes any expenditures, the aggregate amount of which is more than \$100, or, within ten days from the date a noncandidate committee receives any contributions or makes any expenditures, the aggregate amount of which is more than \$1,000~~].

(b) Committees that form within ten days of [an] any election and expend in the aggregate more than \$1,000 for the election shall register and fully disclose the expenditure by 4:30 p.m. on the last calendar day prior to the expenditure.

(c) Each candidate who files nomination papers for office with the chief election officer or county clerk shall file an organizational report within ten days of [filing]:

- (1) Filing the nomination papers for office; or
- (2) The date the candidate or candidate’s committee receives contributions or makes expenditures that amount to more than \$100 in the aggregate during the applicable election period.

(d) An elected official who is seeking re-election to the same office in successive elections shall not be required to file an organizational report under this section unless the candidate is required to report a change in information pursuant to section 11-196(b); provided that the candidate has not sought election to any other office during the period between elections.

(e) A noncandidate committee shall file an organizational report within ten days of receiving contributions or making expenditures that amount to more than \$1,000, in the aggregate, in a two-year election period.”

SECTION 5. Section 11-195, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (d) to read:

“(d) All reports filed with the county clerk’s office shall be preserved by that office for [ten] four years[;] from the date of receipt.”

2. By amending subsection (f) to read:

“(f) For purposes of this subpart, whenever a report is required to be filed with the commission, “filed” means received in the office of the commission or county clerk, whichever is applicable, by the date and time specified for the filing of the report; except that a candidate or the committee of a candidate who is seeking election to the [office of]:

- (1) [Governor;] Office of governor;

- (2) ~~[Lieutenant governor;]~~ Office of lieutenant governor;
- (3) ~~[Mayor;]~~ Office of mayor;
- (4) ~~[Prosecuting attorney; or]~~ Office of prosecuting attorney;
- (5) County council;
- (6) Senate;
- (7) House of representatives; or
- (8) Office of Hawaiian affairs,

shall file by electronic means in the manner prescribed by the commission. Candidates for the offices named in this subsection with contributions or expenditures of less than \$5,000 need not file by electronic means. A candidate or candidate committee without access to a computer or the Internet may request a waiver from electronic filing from the commission.”

SECTION 6. Section 11-200, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any provision of law to the contrary notwithstanding, a candidate, campaign treasurer, or candidate’s committee, as a contribution:

- (1) May purchase from its campaign fund not more than two tickets for each event held by another candidate, committee, or party whether or not the event constitutes a fundraiser as defined in section 11-203;
- (2) May use campaign funds for any ordinary and necessary expenses incurred in connection with the candidate’s duties as a holder of an elected state or county office, as the term is used in section 11-206(c); and
- (3) May make contributions from its campaign fund to any community service, educational, youth, recreational, charitable, scientific, or literary organization[;]; provided that in any election cycle, the total amount of all contributions from campaign funds and surplus funds shall be no more than the maximum amount that one person or other entity may contribute to that candidate pursuant to section 11-204(a)[-]; provided further that no contributions from campaign funds shall be made from the date the candidate files nomination papers to the date of the general election.”

SECTION 7. Section 11-204, Hawaii Revised Statutes, is amended to read as follows:

**“§11-204 Campaign contributions; limits as to persons.**

- (a)(1) No person or any other entity shall make contributions to:
  - (A) A candidate seeking nomination or election to a two-year office or to the candidate’s committee in an aggregate amount greater than \$2,000 during an election period;
  - (B) A candidate seeking nomination or election to a four-year state-wide office or to the candidate’s committee in an aggregate amount greater than \$6,000 during an election period; and
  - (C) A candidate seeking nomination or election to a four-year non-statewide office or to the candidate’s committee in an aggregate amount greater than \$4,000 during an election period.

These limits shall not apply to a loan made to a candidate by a financial institution in the ordinary course of business[-];
- (2) For purposes of this section, the length of term of an office shall be the usual length of term of the office as unaffected by reapportionment, a special election to fill a vacancy, or any other factor causing the term of

the office the candidate is seeking to be less than the usual length of term of that office.

(b) No person or any other entity shall make contributions to a noncandidate committee, in an aggregate amount greater than \$1,000 in an election[; ~~except that in the case of a corporation or company using funds from its own treasury, there shall be no limit on contributions or expenditures to the corporation or company non-candidate committee~~].

(c) A candidate's immediate family, in making contributions to the candidate's campaign, shall be exempt from the above limitation, but shall be limited in the aggregate to \$50,000 in any election period. The aggregate amount of \$50,000 shall include any loans made for campaign purposes to the candidate from the candidate's immediate family.

(d) A contribution by a dependent minor shall be reported in the name of the minor but shall be counted against the contribution of the minor's parent or guardian.

(e) Any candidate, candidate's committee, or committee that receives in the aggregate more than the applicable limits set forth in this section in any primary, initial special, special, or general election from a person, shall be required to ~~do one of the following:~~

- (1) ~~Regardless of whether the excess donation was inadvertently made, to transfer an amount equal to any excess over the limits established in this section to the Hawaii election campaign fund within thirty days of receipt of the contribution, and in any event, no later than thirty days upon the receipt by a candidate, candidate's committee, or committee, of notification from the commission; or~~
- (2) ~~If the excess donation was inadvertently made, to return to the donor any excess over the limits established in this section and to notify the commission within thirty days of receipt of the contribution.]~~

return any excess contribution to the original donor within thirty days of receipt of the excess contribution. Any excess contribution not returned to the original donor within thirty days shall escheat to the Hawaii election campaign fund. A candidate, candidate's committee, or committee who complies with this subsection prior to the initiation of prosecution shall not be subject to any penalty under section 11-228.

(f) All payments made by a person or political party whose contributions or expenditure activity is financed, maintained, or controlled by any corporation, labor organization, association, political party, or any other person or committee, including any parent, subsidiary, branch, division, department, or local unit of the corporation, labor organization, association, political party, political committees established and maintained by a national political party, or any other person, or by any group of those persons shall be considered to be made by a single person or political party.

~~[(g) A contribution made by two or more corporations shall be treated as one person when such corporations:~~

- ~~(1) Share the majority of members of their boards of directors;~~
- ~~(2) Share two or more corporate officers;~~
- ~~(3) Are owned or controlled by the same majority shareholder or shareholders; or~~
- ~~(4) Are in a parent subsidiary relationship.~~

~~[(h)] (g) An individual and any general partnership in which the individual is a partner[, or an individual and any corporation in which the individual owns a controlling interest,] shall be treated as one person.~~

~~[(i)] (h) No committee [which] that supports or opposes a candidate for public office shall have as officers individuals who serve as officers on any other committee which supports or opposes the same candidate. No such committee shall act in concert with, or solicit or make contributions on behalf of, any other committee.~~

~~[(j)]~~ (i) No contributions or expenditures shall be made to or on behalf of a candidate or committee by a foreign national or foreign corporation, including a domestic subsidiary of a foreign corporation, a domestic corporation that is owned by a foreign national, or a local subsidiary where administrative control is retained by the foreign corporation, and in the same manner prohibited under 2 United States Code section 441e and 11 Code of Federal Regulations ~~[110.4(a) and 110.9(a),]~~ 110.20, as amended. No foreign-owned domestic corporation shall make contributions where:

- (1) Foreign national individuals participate in election-related activities such as decisions concerning the making of contributions or the administration of a political committee; or
- (2) The contribution funds are not domestically-derived.

~~[(k)]~~ (j) No person or any other entity other than political committees established and maintained by a national political party shall make contributions to a political party in an aggregate amount greater than \$25,000 in any two-year election period. No political committee established and maintained by a national political party, shall make contributions to a political party in an aggregate amount greater than \$50,000 in any two-year election period.

~~[(k) Except for subsection (j), this]~~ (k) The contribution limits under this section shall apply for the office sought by the candidate. This section shall not apply to ballot issue committees.'

SECTION 8. Section 11-205.5, Hawaii Revised Statutes, is amended to read as follows:

**“§11-205.5 Campaign contributions by state and county contractors. (a)** ~~[Any person making a contribution to any candidate, committee, or political party, and who has received, in any calendar year, \$50,000 or more through contracts from the State, or county shall register and report that fact to the commission within thirty days of the date of the contribution or within thirty days of the date of the contract, whichever occurs later; provided that this section shall not apply to a person who has received \$50,000 or more through a grant, subsidy, or purchase of service agreement under chapter 42F or 103F.~~

~~(b) The commission shall prescribe forms and procedures for the reporting required in subsection (a) which, at a minimum, shall require the following information:~~

- ~~(1) The name and address of the person making the contribution;~~
- ~~(2) The name of the candidate, committee, or political party receiving the contribution;~~
- ~~(3) The amount of money received from the State or county, the dates, and information identifying each contract and describing the service performed or goods provided; and~~
- ~~(4) If an entity is making the contribution, the names and business addresses of the principals, including officers and directors.~~

~~(c) The commission shall maintain a list of such reports for public inspection both at the commission's office and through the state FYI electronic bulletin board.]~~

It shall be unlawful for the person who enters into any contract with the State, any of its counties, or any department or agency thereof either for the rendition of personal services, the buying of property, or furnishing any material, supplies, or equipment to the State, any of its counties, department or agency thereof, or for selling any land or building to the State, any of its counties, or any department or agency thereof, if payment for the performance of the contract or payment for material, supplies, equipment, land, property, or building is to be made in whole or

in part from funds appropriated by the legislative body, at any time between the execution of the contract through the completion of the contract, to:

- (1) Directly or indirectly make any contribution or to promise expressly or impliedly to make any contribution to any political party, committee, or candidate or to any person for any political purpose or use; or
- (2) Knowingly solicit any contribution from any person for any purpose during any period.

(b) This section does not prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, any separate segregated fund by any state or national bank, corporation, or labor organization for the purpose of influencing the nomination for election or the election of any person to office; provided that the commission shall by rule establish contribution limits for limited liability companies as defined in section 428-101, limited liability partnerships as defined in section 425-101, and limited liability limited partnerships as defined in section 425E-102. Sole proprietors subject to this section shall comply with applicable campaign contribution limits in section 11-204.

(c) For purposes of this section, "completion of the contract" means that the parties to the government contract have either terminated the contract prior to completion of performance or fully performed the duties and obligations under the contract, no disputes relating to the performance and payment remain under the contract, and all disputed claims have been adjudicated and are final."

SECTION 9. Section 11-205.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any loan to a candidate or candidate's committee in excess of \$100 shall be documented and disclosed as to lender, including the lender's name, address, employer, and occupation and purpose of the loan in the subsequent report to the commission. A copy of the executed loan document shall accompany the report. The document shall contain the [relevant repayment obligations under this section.] terms of the loan, including the interest and repayment schedule. Failure to document the loan or to disclose the loan to the commission shall cause the loan to be treated as a campaign contribution, subject to all relevant provisions of this chapter."

SECTION 10. Section 11-206, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) [~~Such contributions~~] Surplus funds may be used after a general or special election for [~~any fundraising activity, for~~]:

- (1) Any fundraising activity;
- ~~(1)~~ (2) Any other politically related activity sponsored by the candidate;
- ~~(2)~~ (3) Any ordinary and necessary expenses incurred in connection with the candidate's duties as a holder of an elected state or county office; or
- ~~(3)~~ (4) Any contribution to any community service, educational, youth, recreational, charitable, scientific, or literary organization[.]; provided that in any election cycle, the total amount of all contributions from campaign funds and surplus funds shall be no more than the maximum amount that one person or other entity may contribute to that candidate pursuant to section 11-204(a)[.]; provided further that no contributions from campaign funds shall be made from the date the candidate files nomination papers to the date of the general election."

SECTION 11. Section 11-207, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Expenditures[;] or disbursements for electioneering communications as defined in section 11-207.6, or any other coordinated activity made by any person or political party for the benefit of a candidate in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate’s [political] committee, or their agents, shall be considered to be a contribution to [such] the candidate and expenditure by [such] the candidate.

The financing by any person or political party of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written or other campaign materials prepared by the candidate, the candidate’s [political] committee [or committees], or agents shall be considered to be a contribution to [such] the candidate.

This subsection shall not apply to candidates for governor or lieutenant governor supporting a co-candidate in the general election.

(b) ~~[No funds shall be withdrawn or paid from a campaign depository except upon the written authorization of the campaign treasurer.]~~ “Coordinated activity” means:

- (1) The payment by any person in cooperation, consultation, or concert with, at the request of, or pursuant to, any general or particular understanding with a candidate, candidate committee, the political party of a candidate, or an agent of a candidate, committee, or the political party of a candidate;
- (2) The payment by any person for the production, dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign material prepared by a candidate, committee, or an agent of a candidate or committee; or
- (3) Any payment by any person or contract for any electioneering communication, as defined in section 11-207.6, where the payment is coordinated with a candidate, candidate committee, the political party of the candidate, or an agent of a candidate, committee, or the political party of a candidate.”

SECTION 12. Section 11-207.6, Hawaii Revised Statutes, is amended to read as follows:

“~~[§11-207.6]~~ **Electioneering communications.** (a) Every person who makes a disbursement for electioneering communications in an aggregate amount of \$2,000 during any calendar year shall, within twenty-four hours of each disclosure date provided in this section, file with the commission a statement of information described in subsection (b).

(b) Each statement required to be filed under this section shall contain the following information:

- (1) The identification of the person making the disbursement, any entity sharing or exercising discretion or control over such person, and the custodian of the books and accounts of the person making the disbursement;
- (2) The state of incorporation and principal place of business or, for an individual, the address of the person making the disbursement;
- (3) The amount of each disbursement during the period covered by the statement and the identification of the person to whom the disbursement was made;
- (4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified;

- (5) If the disbursements were made by a committee, the names and addresses of all persons who contributed to the committee for the purpose of publishing or broadcasting the electioneering communications;
- (6) If the disbursements were made by an organization other than a committee, the names and addresses of all persons who contributed to the organization for the purpose of publishing or broadcasting the electioneering communications; and
- (7) Whether or not any electioneering communication is made in coordination, cooperation, or concert with or at the request or suggestion of any candidate, candidate committee, political party or agent of any candidate, candidate committee or political party and, if so, the identification of the candidate, candidate committee, political party, or agent involved.

(c) For the purposes of this section:

“Disclosure date” means, for every calendar year, the first date by which a person has made disbursements during that same year of more than \$2,000, in the aggregate, for electioneering communications, and the date of any subsequent disbursements by that person for electioneering communications.

“Electioneering communication” means any [paid] advertising [broadcast];

- (1) (A) Broadcast from a cable, satellite, television, or radio broadcast station~~[-or published];~~
  - (B) Published in any periodical or newspaper~~[-or sent]; or~~
  - (C) Sent by mail at a bulk rate~~[-which];~~
- (2) That refers to a clearly identifiable candidate; and [is]
- (3) Is made, or scheduled to be made, either within thirty days prior to a primary or initial special election or within sixty days prior to a general or special election.

“Electioneering communication” shall not include communications ~~in~~:

- (1) In a news story or editorial~~[-communications which] disseminated by any broadcast station or publisher of periodicals or newspapers, unless the facilities are owned or controlled by any political party, political committee, or candidate;~~
- (2) That constitute expenditures by the disbursing organization~~[-or communications in house];~~
- (3) In in-house bulletins~~[-]; or~~
- (4) That constitute a candidate debate or forum, or solely promote a debate or forum and are made by or on behalf of the person sponsoring the debate or forum.

(d) For purposes of this section, a person shall be treated as having made a disbursement if the person has executed a contract to make the disbursement.”

SECTION 13. Section 11-209, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) From January 1 of the year of any primary, special, or general election, the total expenditures for each election for candidates who voluntarily agree to limit their campaign expenditures, inclusive of all expenditures made or authorized by the candidate alone and all campaign treasurers and committees in the candidate’s behalf, shall not exceed the following amounts expressed respectively multiplied by the number of voters in the last preceding general election registered to vote in each respective voting district:

- (1) For the office of governor—\$2.50;
- (2) For the office of lieutenant governor—\$1.40;
- (3) For the office of mayor—\$2.00;

- (4) For the offices of state senator, state representative, and county council member[~~-, and prosecuting attorney~~]-\$1.40; and
- (5) For the offices of the board of education and all other offices—20 cents.’’

SECTION 14. Section 11-212, Hawaii Revised Statutes, is amended to read as follows:

**“§11-212 Preliminary reports.**

- (a)(1) The candidate committee of each candidate whose name will appear on the ballot in the immediately succeeding election shall file a preliminary report with the commission or appropriate county clerk’s office. Preliminary reports shall be filed on forms provided by the commission no later than 4:30 p.m. on the following dates:
  - (A) July thirtieth of the year of the primary election;
  - (B) Ten calendar days prior to each primary and initial special election; and
  - (C) Ten calendar days prior to a special or general election.
- (2) Each report shall be certified pursuant to section 11-195 and shall contain the following information which shall be current through the thirtieth calendar day prior to the filing of the report filed on the thirtieth of July and fifth calendar day prior to the filing of other preliminary reports:
  - (A) The aggregate sum of all contributions and other campaign receipts received;
  - (B) The amount and date of deposit of the contribution and the name and address of each donor who contributes an aggregate of more than \$100 during an election period, which has not previously been reported; provided that if all the information is not on file, the contribution shall be returned to the donor within thirty days of deposit;
  - (C) The amount and date of deposit of each contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of \$1,000 or more during an election period, which has not previously been reported; provided that if all the information is not on file, the contribution shall be returned to the donor within thirty days of deposit;
  - (D) All expenditures made, incurred, or authorized by or for a candidate, including the name and address of each payee and the amount, date, and purpose of each expenditure; and
  - (E) A current statement of the balance on hand or deficit.
- (b) Each noncandidate committee shall file a preliminary report with the commission, on forms provided by the commission, no later than 4:30 p.m. on the tenth calendar day prior to each primary election and the tenth calendar day prior to a special or general election. Each report shall be certified pursuant to section 11-195 and shall contain the following information, which shall be current through the fifth calendar day prior to the filing of a preliminary report:
  - (1) The aggregate sum of all contributions and other campaign receipts received;
  - (2) The amount and date of deposit of the contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of \$100 or more during an election period, which has not previously been reported; provided that if all the information is not on



file, the contribution shall be returned to the donor within thirty days of deposit;

- (3) The amount and date of each disbursement or contribution made to a candidate, party, organization, or committee, including the name and address of each payee, which has not previously been reported;
- (4) The amount and date of each expenditure made or incurred by the committee for or against any candidate, ballot issue, or on behalf of another committee, which has not previously been reported; and
- (5) A current statement of the balance on hand.

(c) The candidate's committee and noncandidate committee shall itemize disbursements to consultants, advertising agencies and similar firms, credit card payments, salaries, and candidate reimbursements to permit a reasonable person to determine the ultimate intended recipient of the expenditure and its purpose.

~~[(e)]~~ (d) A candidate, party, or committee whose aggregate contributions and aggregate expenditures for the reporting period each total \$2,000 or less may file a short form report with the commission or appropriate county clerk's office in lieu of the reports required by this section and section 11-213.

~~[(d)]~~ (e) Notwithstanding this section and section 11-213, a candidate, party, or committee whose aggregate contributions and aggregate expenditures for the election period total \$1,000 or less, need not file a preliminary and final primary report, a preliminary and final general report, or a special election report, but shall file only a final election period report.”

SECTION 15. Section 11-213, Hawaii Revised Statutes, is amended to read as follows:

**“§11-213 Final and supplemental reports.** (a) Primary and initial special election. Each candidate whether or not successful in a primary or initial special election, authorized person in the case of a party, or campaign treasurer in the case of a committee, shall file a final primary report certified pursuant to section 11-195 with the commission on forms provided by the commission no later than 4:30 p.m. on the twentieth calendar day after a primary or initial special election. The report shall include the following information which shall be current through the day of the primary election:

- (1) A statement of the total contributions and campaign receipts received;
- (2) The amount and date of deposit of each contribution and the name and address of each donor who contributes an aggregate of more than \$100 during an election period, which has not previously been reported; provided that if all the information is not on file, the contribution shall be returned to the donor within thirty days of deposit;
- (3) The amount and date of deposit of each contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of \$1,000 or more during an election period, which has not previously been reported; provided that if all the information is not on file, the contribution shall be returned to the donor within thirty days of deposit;
- (4) A statement of all expenditures made, incurred, or authorized by or for a candidate including the name and address of each payee and the amount, date, and purpose of each expenditure; and
- (5) The cash balance and a statement of surplus or deficit.

(b) Each noncandidate committee shall file a final primary report, certified pursuant to section 11-195, with the commission on forms provided by the commission no later than 4:30 p.m. on the twentieth calendar day after a primary election.

The report shall include the following information, which shall be current through the day of the primary election:

- (1) A statement of the total contributions and campaign receipts received;
- (2) The amount and date of deposit of each contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of more than \$100 during an election, which has not previously been reported;
- (3) The amount and date of each disbursement or contribution made to a candidate, party, organization, or committee, including the name and address of each payee, which has not previously been reported;
- (4) The amount and date of each expenditure made or incurred by the committee for or against any candidate, ballot issue, or on behalf of another committee, which has not previously been reported; and
- (5) A current statement of the balance on hand.

(c) The candidate's committee and noncandidate committee shall itemize disbursements to consultants, advertising agencies and similar firms; credit card payments; salaries; and candidate reimbursements, to permit a reasonable person to determine the ultimate intended recipient of the expenditure and its purpose.

~~[(e)]~~ (d) General, special general, special election or election period. Each candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall file a final election period general report with the commission on forms provided by the commission no later than 4:30 p.m. on the thirtieth calendar day after a general, special general, or special election. The final election period report shall be certified pursuant to section 11-195, shall report all items prescribed in subsection (a) or (b) for noncandidate committees, and shall be current through the day of the general election. A candidate who is unsuccessful in a primary or special primary election shall file a final election period report.

~~[(d)]~~ (e) Termination. A candidate, party, or committee may terminate registration with the commission with no surplus or no deficit. A termination report approved by the commission shall include information on the disposition of any funds, which has not previously been reported.

~~[(e)]~~ (f) Deficit. In the event of a deficit the candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall, every six months until the deficit is eliminated, file supplemental reports covering all items prescribed in subsection (a) or subsection (b) in the case of noncandidate committees. The first report shall be due no later than 4:30 p.m. on the thirtieth day after the last day of the election year.

~~[(f)]~~ (g) Surplus. In the event of a surplus the candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee, shall:

- (1) Maintain the cash surplus in a financial depository; and
- (2) Every six months, until the candidate files to be on the ballot with the state office of elections, or in the case of a party or committee until they participate in an election again, file supplemental reports detailing all items prescribed in subsection (a) or in the case of a noncandidate committee until they participate in an election again, or file supplemental reports detailing all items prescribed in subsection (b).

The first report shall be due not later than 4:30 p.m. on the thirtieth calendar day after the last day of the election year.

~~[(g)]~~ (h) All supplemental reports required by this section shall be filed until a candidate files to be on the ballot with the state elections office. Each party or noncandidate committee shall file a supplemental report for the respective reporting period during a nonelection year. In an election year, each party and noncandidate committee shall file reports as prescribed in this section and section 11-212 for the primary and general election.”

SECTION 16. Section 11-214, Hawaii Revised Statutes, is amended to read as follows:

~~“§11-214 Disposition of funds. (a) All candidates who withdraw or cease to be candidates, or committees directly associated with such candidates, individuals who receive contributions but fail to file for nomination, or committees or parties which discontinue their activities covered in this subpart, shall return all residual private contributions to the donors of such contributions within four years if their identities are known, provided that if the identity of any donor is not known, or the donor cannot be found, such contribution shall escheat to the Hawaii election campaign fund or may be donated to a nonprofit organization of the candidate's choice. In the event of a death of a candidate, the candidate's committee, if any, shall return all residual private contributions to the donors of such contributions, provided that any residual contributions not returned to the donors within sixty days of the candidate's death shall escheat to the Hawaii election campaign fund or may be donated to a nonprofit organization of the candidate's choice.~~

~~(b) All residual public funds shall be returned to the Hawaii election campaign fund.~~

~~(c) Upon disposition of all residual funds, the candidate or campaign treasurer shall file a report with the commission, reporting the amounts distributed under this section and the manner of disposition.~~

~~(d) This section shall not apply to:~~

~~(1) Elected officials;~~

~~(2) Candidates who failed to be nominated or elected yet who become a candidate for nomination or election to office within four years thereafter;~~

~~(3) Elected officials who resign their office before the end of their term yet who file to become a candidate for reelection within four years after the end of the term from which they resigned; or~~

~~(4) Elected officials who do not seek reelection yet who file to become a candidate for election within four years after the end of the term from which they did not seek reelection.]~~

(a) Candidates, committees, and individuals who receive contributions for an election but fail to file a nomination for that election shall return all residual funds to the donors no later than ninety days after the date on which nominations for that election must be filed. Contributions not returned to the donors shall escheat to the Hawaii election campaign fund.

(b) Candidates, committees, and individuals who withdraw or cease to be candidates or committees because of death, term limits, disqualification, resignation, or other personal reasons shall return all residual funds to the donors no later than ninety days after the candidate or committee ceases to be a candidate or committee. Residual funds not returned to the donors shall escheat to the Hawaii election campaign fund. Contributions shall only be used for expenditures directly related to the candidate's or committee's activities to influence the outcome of the election or nomination for election.

(c) Candidates, and the committees of a candidate who:

(1) Are elected to office, may expend surplus funds pursuant to section 11-206, but under no circumstances shall expenditures be made from funds after four years from the date of the election for which the contributions were received; or

(2) Fail to be nominated or elected to office, may expend surplus funds pursuant to section 11-206 but under no circumstances shall expenditures be made from funds after one year from the date of the election for which the contributions were received.

Contributions not returned to the donors shall escheat to the Hawaii election campaign fund.

(d) Surplus funds may be expended by a candidate for the next subsequent election upon registration for the election pursuant to section 11-194.

(e) Candidates or committees that dispose of funds pursuant to this section shall terminate registration with the commission as provided in section 11-213.

(f) The commission shall adopt rules under chapter 91 for carrying out the purposes of this section.”

SECTION 17. Section 11-218, Hawaii Revised Statutes, is amended to read as follows:

**“§11-218 Candidate funding; amounts available.** (a) ~~[The maximum amount of public funds available to a candidate for]~~ For the office of governor, lieutenant governor, or mayor, the maximum amount of public funds available to a candidate in any election shall not exceed ten per cent of the total expenditure limit as determined under section 11-209 for each election [as established] for each office listed in this subsection ~~[pursuant to section 11-209]~~.

(b) For the office of state senator, state representative, county council member, and prosecuting attorney, the maximum amount of public funds available to a candidate in any election shall be fifteen per cent of the total expenditure limit as determined under section 11-209 for each election [as established] for each office listed in this subsection ~~[pursuant to section 11-209]~~.

(c) For the office of Hawaiian affairs, the maximum amount of public funds available to a candidate shall not exceed \$1,500 in any election year.

~~[(e)]~~ (d) For the board of education and all other offices, the maximum amount of public funds available to a candidate shall not exceed \$100 in any election year.

~~[(d)]~~ (e) Each candidate who qualified for the maximum amount of public funding in any primary ~~[or special primary]~~ election and who is a candidate for a subsequent general election shall apply with the commission to be qualified to receive the maximum amount of public funds as provided in this section for the respective election. For purposes of this section ~~[qualified]~~, “qualified” means meeting the qualifying campaign contribution requirements of section 11-219.”

SECTION 18. Section 11-219, Hawaii Revised Statutes, is amended to read as follows:

**“§11-219 Qualifying campaign contributions; amounts.** As a condition of receiving public funds for a primary~~[, special primary,]~~ or general election, a candidate shall not be unopposed in any election for which public funds are sought, ~~[and]~~ shall have filed an affidavit with the commission pursuant to section 11-208 to voluntarily limit the candidate’s campaign expenditures, and shall be in receipt of the following sum of qualifying campaign contributions from individual residents of Hawaii [for the candidate’s respective office for each election]:

- (1) For the office of governor—qualifying contributions that in the aggregate, exceed \$100,000;
- (2) For the office of lieutenant governor—qualifying contributions that in the aggregate, exceed \$50,000;
- (3) For the office of mayor for each respective county:
  - (A) County of Honolulu—qualifying contributions that in the aggregate, exceed \$50,000;
  - (B) County of Hawaii—qualifying contributions that in the aggregate, exceed \$15,000;

- (C) County of Maui—qualifying contributions that in the aggregate, exceed \$10,000; and
- (D) County of Kauai—qualifying contributions that in the aggregate, exceed \$5,000; and
- (4) For the office of prosecuting attorney for each respective county:
  - (A) County of Honolulu—qualifying contributions that in the aggregate, exceed \$30,000;
  - (B) County of Hawaii—qualifying contributions that in the aggregate, exceed \$10,000; and
  - (C) County of Kauai—qualifying contributions that in the aggregate, exceed \$5,000;
- (5) For the office of county council—for each respective county:
  - (A) County of Honolulu—qualifying contributions that in the aggregate, exceed \$5,000;
  - (B) County of Hawaii—qualifying contributions that in the aggregate, exceed \$1,500;
  - (C) County of Maui—qualifying contributions that in the aggregate, exceed \$5,000; and
  - (D) County of Kauai—qualifying contributions that in the aggregate, exceed \$3,000;
- (6) For the office of state senator—qualifying contributions that, in the aggregate, exceed \$2,500;
- (7) For the office of state representative—qualifying contributions that, in the aggregate, exceed \$1,500; ~~and~~
- ~~(8) For the office of Hawaiian affairs—qualifying contributions that, in the aggregate, exceed \$1,500; and~~
- ~~(8)~~ (9) For all other offices, qualifying contributions that, in the aggregate, exceed \$500.’

SECTION 19. Section 11-220, Hawaii Revised Statutes, is amended to read as follows:

“**§11-220 Eligibility for payments.** (a) To be eligible to receive payments under section 11-217, a candidate shall in writing:

- (1) Agree to obtain and furnish to the commission any evidence of the campaign expenses of such candidate which the commission may request;
  - (2) Agree to keep and furnish records, books, and other information which the commission may request; and
  - (3) Agree to an audit and examination by the commission under section 11-225 and to pay any amounts required to be paid pursuant to ~~such~~ that section.
- (b) To be eligible to receive payments pursuant to section 11-217, a candidate shall certify to the commission that:
- (1) ~~Such~~ The candidate and all committees authorized by ~~such~~ the candidate shall not incur campaign expenses in excess of the expenditure limitations imposed by section 11-209;
  - (2) ~~Such~~ The candidate has qualified to be on the election ballot in a primary~~[- special primary,]~~ or general election;
  - (3) ~~Such~~ The candidate has filed a statement of intent to seek qualifying contributions. A contribution received before the filing of a statement of intent to seek public funds shall not be considered a qualifying contribution;

- (4) [~~Sueh~~] The candidate or committee authorized by [sueh] the candidate has received the qualifying sum of private contributions for the office sought by the candidate as set forth in section 11-219; and
- (5) The aggregate of contributions certified with respect to any person under paragraph (4) does not exceed \$100.

(c) Each candidate and [all committees authorized by such candidate] candidate's committee in receipt of qualifying campaign contributions which may be taken into account for purposes of public funding shall maintain, on a form prescribed by the commission, records which show the date and amount of each [sueh] qualifying campaign contribution and the full name and mailing address of the person making the contribution. The candidate and all committees authorized by the candidate shall transmit to the commission all reports with respect to [sueh] these contributions [which] that the commission may require."

SECTION 20. Section 11-221, Hawaii Revised Statutes, is amended to read as follows:

"§11-221 Entitlement to payments. [Every candidate who is eligible to receive public funds pursuant to section 11-220 is entitled to payments pursuant to section 11-217 in an amount equal to each qualifying contribution received by that candidate or candidate committee during the matching payment period involved. A qualifying contribution shall be attributed to a primary, special or general election.

A candidate eligible to receive public funds must obtain a minimum amount of qualifying campaign contributions as set forth in section 11-219 in order to be entitled to receive any matching public funds in an election. For the purpose of this section, a) (a) A candidate shall obtain the minimum amount of qualifying contributions set forth in section 11-219, once for the election period. After the candidate obtains the minimum amount of qualifying campaign contributions, the candidate shall be entitled to receive for each election that the candidate's name appears on the ballot:

- (1) The minimum payment in an amount equal to the qualifying campaign contributions; and
- (2) Payments of \$1 for each \$1 of qualifying contributions in excess of the minimum amount of qualifying contributions;

provided that the candidate shall not receive more than the maximum amount of public funds available to a candidate pursuant to section 11-218; provided further that the candidate shall not receive public funds for a primary election if the candidate does not obtain the minimum amount of qualifying contributions before the date of the primary election.

(b) A candidate [must] shall have at least one other qualified candidate as an opponent for the primary[, special,] or general election to receive public funds for that election."

SECTION 21. Section 11-222, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Each candidate in receipt of the qualifying sum of contributions established for the candidate's office may apply to the commission for public funding after the candidate has become a candidate in a primary[, special primary, special,] or general election."

SECTION 22. Section 11-223, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) Each candidate, on the deadline for filing of a final report for any primary ~~[, special primary, special,]~~ or general election, shall return all unexpended public funds to the Hawaii election campaign fund.”

SECTION 23. Section 11-224, Hawaii Revised Statutes, is amended to read as follows:

“**§11-224 Public funds; report required; return of funds.** The campaign treasurer of the candidate shall produce evidence to the commission no later than twenty days after a primary ~~[or special primary]~~ election~~;~~ and no later than thirty days after a ~~[special or]~~ general election that all public funds paid to the candidate have been ~~[utilized]~~ used as required by this subpart.

Should the commission determine that any part of the public funds have been used for noncampaign or improper expenses, it shall report such finding to the attorney general and shall order the candidate to return all or part of the ~~[total]~~ funds paid to that candidate for a primary ~~[, special primary, special,]~~ or general election. When ~~[such]~~ public funds are returned, they shall be deposited in the Hawaii election campaign fund.”

SECTION 24. Section 11-229, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person who knowingly, intentionally, or recklessly violates any provision of this subpart shall be guilty of a misdemeanor. Any person who knowingly or intentionally falsifies any report required by this subpart with the intent to circumvent the law or deceive the commission or who violates section 11-201 or 11-202 shall be guilty of a class C felony. A person charged with a class C felony shall not be eligible for a deferred acceptance of guilty plea or nolo contendere plea under chapter 853. A person who is convicted under this section shall be disqualified from holding elective public office for a period of four years from the date of conviction.”

SECTION 25. Section 853-4, Hawaii Revised Statutes, is amended to read as follows:

“**§853-4 Chapter not applicable; when.** This chapter shall not apply when:

- (1) The offense charged involves the intentional, knowing, reckless, or negligent killing of another person;
- (2) The offense charged is:
  - ~~[(a)]~~ (A) A felony that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person; or
  - ~~[(b)]~~ (B) A misdemeanor or petty misdemeanor that carries a mandatory minimum sentence and that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person;
- (3) The offense charged involves a conspiracy or solicitation to intentionally, knowingly, or recklessly kill another person or to cause serious bodily injury to another person;
- (4) The offense charged is a class A felony;
- (5) The offense charged is nonprobationable;
- (6) The defendant has been convicted of any offense defined as a felony by the Hawaii Penal Code or has been convicted for any conduct that if perpetrated in this State would be punishable as a felony;

- (7) The defendant is found to be a law violator or delinquent child for the commission of any offense defined as a felony by the Hawaii Penal Code or for any conduct that if perpetrated in this State would constitute a felony;
- (8) The defendant has a prior conviction for a felony committed in any state, federal, or foreign jurisdiction;
- (9) A firearm was used in the commission of the offense charged;
- (10) The defendant is charged with the distribution of a dangerous, harmful, or detrimental drug to a minor;
- (11) The defendant has been charged with a felony offense and has been previously granted deferred acceptance of guilty plea status for a prior offense, regardless of whether the period of deferral has already expired;
- (12) The defendant has been charged with a misdemeanor offense and has been previously granted deferred acceptance of guilty plea status for a prior felony, misdemeanor, or petty misdemeanor for which the period of deferral has not yet expired;
- (13) The offense charged is:
  - (A) Escape in the first degree;
  - (B) Escape in the second degree;
  - (C) Promoting prison contraband in the first degree;
  - (D) Promoting prison contraband in the second degree;
  - (E) Bail jumping in the first degree;
  - (F) Bail jumping in the second degree;
  - (G) Bribery;
  - (H) Bribery of a witness;
  - (I) Intimidating a witness;
  - (J) Bribery of or by a juror;
  - (K) Intimidating a juror;
  - (L) Jury tampering;
  - (M) Promoting prostitution in the first degree;
  - (N) Promoting prostitution in the second degree;
  - (O) Promoting prostitution in the third degree;
  - (P) Abuse of family or household members;
  - (Q) Sexual assault in the second degree;
  - (R) Sexual assault in the third degree; or
  - (S) A violation of an order issued pursuant to chapter 586[-]; or
- (14) The defendant has been charged with:
  - (A) Knowingly or intentionally falsifying any report required under chapter 11, subpart B of part XII, with the intent to circumvent the law or deceive the campaign spending commission; or
  - (B) Violating section 11-201 or 11-202.

The court may adopt by rule other criteria in this area.”

SECTION 26. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 27. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.



SECTION 28. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 29. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 30. This Act shall take effect on January 1, 2006.

(Approved July 6, 2005.)

#### Notes

1. Should be "two".
2. Edited pursuant to HRS §23G-16.5.

## ACT 204

S.B. NO. 639

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 302A, Hawaii Revised Statutes, part III, is amended by adding a new subpart to be appropriately designated and to read as follows:

#### “ . TEACHERS’ HOUSING

**§302A-A Purpose.** The purpose of this subpart is to transfer the administration of the teachers’ housing program from the housing and community development corporation of Hawaii to the department of education. This subpart also establishes a revolving fund for the accounting and control of receipts and disbursements in connection with the department of education’s functions of planning, constructing, repairing, maintaining, and operating housing programs for teachers employed and assigned by the department of education.

**§302A-B Teachers’ housing program; administration.** (a) The department shall administer the teachers’ housing program under this subpart. The department shall:

- (1) Administer the teachers’ housing revolving fund under section 302A-C;
- (2) Provide annual statements under section 302A-D;
- (3) Conduct annual reviews of units under section 302A-E; and
- (4) Perform any other duty necessary to effectuate this subpart.

(b) The department may adopt rules pursuant to chapter 91 to effectuate this subpart.

**§302A-C Teachers’ housing revolving fund.** (a) There is established in the state treasury a revolving fund to be known as the teachers’ housing revolving fund to be administered by the department of education. The director of finance shall transfer any moneys appropriated for the purposes of teacher housing to the teachers’ housing revolving fund. All unexpended balances of appropriations, allocations, allotments, special revolving funds, or other funds heretofore created and made available for the purposes of developing or administering teachers’ housing projects shall be transferred to the teachers’ housing revolving fund. Notwithstanding any law to the contrary, all moneys, including refunds, reimburse-

ments, and rentals, for housing from teacher tenants shall be deposited in the revolving fund.

(b) The revolving fund may be used by the department of education for any and all of the purposes of teachers' housing, including the planning, construction, maintenance, and operation of teachers' housing, as well as for the salaries of the necessary personnel in charge thereof.

(c) Whenever the governor determines that the amount in the teachers' housing revolving fund exceeds the requirements of the teacher housing program, the department shall transfer the excess to the state general fund.

**§302A-D Annual statements.** The department of education shall annually prepare for the director of human services and the director of finance a full, detailed description and financial statement of the planning, construction, repair, maintenance, and operation of teachers' housing.

**§302A-E Annual review; disposal of units.** The department of education shall annually review the status of and necessity for subsidized teachers' housing throughout the State and, upon determination that any particular housing unit is no longer necessary, shall dispose of that unit by sale, demolition, or otherwise. Any net proceeds from the disposal of a unit shall be paid to the governmental entity vested with fee title to the unit at the time of disposition, and any deficit incurred in the disposal shall be paid by the State.''

SECTION 2. The department of education shall meet with the housing and community development corporation of Hawaii to discuss the transfer of management of the teacher housing program to the department of education. The department of education shall prepare a report detailing the feasibility of the transfer and the department of education's capacity to assume the corporation's responsibilities.

The department of education shall submit its findings to the legislature no later than twenty days prior to the convening of the regular session of 2007.

SECTION 3. Chapter 201G, part II, subpart G, Hawaii Revised Statutes, is repealed.

SECTION 4. All rights, powers, functions, and duties with respect to the administration of teachers' housing is transferred from the housing and community development corporation of Hawaii to the department of education.

All rules, policies, procedures, guidelines, and other material adopted or developed by the corporation with respect to teachers' housing shall remain in full force and effect until amended or repealed by the department of education. In the interim, every reference to the corporation or chair of the board of directors of the corporation in those rules, policies, procedures, guidelines, and other material is amended to refer to the department of education, or the superintendent, or the chair of the board of education, as the case may be.

All deeds, leases, contracts, loans, agreements, permits, or other documents executed or entered into by or on behalf of the corporation pursuant to the Hawaii Revised Statutes that are reenacted or made applicable to the department of education by this Act shall remain in full force and effect. Effective July 1, 2008, every reference to the housing and community development corporation of Hawaii or the chair of the board of directors of the corporation, with respect to teachers' housing, shall be construed as a reference to the department of education, or the superintendent, or the chair of the board of education, as the case may be.

All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property made, used, acquired,

or held by the corporation, with respect to teachers' housing that relate to the functions transferred to the department of education, shall be transferred with the functions to which they relate.

SECTION 5. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 6. This Act shall take effect upon approval; provided that sections 1, 3, 4, and 5 shall take effect on July 1, 2008.

(Approved July 7, 2005.)

## ACT 205

H.B. NO. 109

A Bill for an Act Relating to Land Use Commission.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to amend the land use commission's regulatory duties. Part I of this Act clarifies permitted uses on agricultural and rural land districts. Part II of this Act facilitates the redefining, expansion, and enhancement of uses on rural district lands.

### PART I

SECTION 2. Section 205-2, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c), in areas where “city-like” concentration of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with low density residential lots except that within a subdivision, as defined in section 484-1, the commission for good cause may allow one lot of less than one-half acre, but not less than 18,500 square feet, or an equivalent residential density, within a rural subdivision and permit the construction of one dwelling on such lot, provided that all other dwellings in the subdivision shall have a minimum lot size of one-half acre or 21,780 square feet. Such petition for variance may be processed under the special permit procedure. These districts may include contiguous areas which are not suited to low density residential lots or small farms by reason of topography, soils, and other related characteristics. Rural districts shall also include golf courses, golf driving ranges, and golf-related facilities.

(d) Agricultural districts shall include activities or uses as characterized by the cultivation of crops, orchards, forage, and forestry; farming activities or uses related to animal husbandry, aquaculture, and game and fish propagation; aquaculture, which means the production of aquatic plant and animal life for food and fiber within ponds and other bodies of water; wind generated energy production for public, private, and commercial use; bona fide agricultural services and uses ~~which~~ that support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, whether or not conducted on the same premises as the agricultural activities to which they are accessory, including but not limited to farm dwellings as defined in section 205-4.5(a)(4), employee housing,

farm buildings, mills, storage facilities, processing facilities, vehicle and equipment storage areas, and roadside stands for the sale of products grown on the premises; wind machines and wind farms; small-scale meteorological, air quality, noise, and other scientific and environmental data collection and monitoring facilities occupying less than one-half acre of land, provided that ~~[such] these~~ facilities shall not be used as or equipped for use as living quarters or dwellings; agricultural parks; and open area recreational facilities~~[-including golf courses and golf driving ranges; provided that they are not located within agricultural district lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B].~~ For the purposes of this chapter, golf courses and golf driving ranges are prohibited in agricultural districts, except as provided in section 205-4.5(d).

These districts may include areas which are not used for, or which are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.”

SECTION 3. Section 205-4.5, Hawaii Revised Statutes, is amended to read as follows:

**“§205-4.5 Permissible uses within the agricultural districts.** (a) Within the agricultural district, all lands with soil classified by the land study bureau’s detailed land classification as overall (master) productivity rating class A or B shall be restricted to the following permitted uses:

- (1) Cultivation of crops, including but not limited to flowers, vegetables, foliage, fruits, forage, and timber;
- (2) Game and fish propagation;
- (3) Raising of livestock, including but not limited to poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;
- (4) Farm dwellings, employee housing, farm buildings, or activity or uses related to farming and animal husbandry~~[-];~~ Farm dwelling as used in this paragraph means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling;
- (5) Public institutions and buildings ~~[which]~~ that are necessary for agricultural practices;
- (6) Public and private open area types of recreational uses including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;
- (7) Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, or treatment plants, or corporation yards, or other like structures;
- (8) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest;
- (9) Roadside stands for the sale of agricultural products grown on the premises;
- (10) Buildings and uses, including but not limited to mills, storage, and processing facilities, maintenance facilities, and vehicle and equipment

storage areas that are normally considered directly accessory to the abovementioned uses and are permitted under section 205-2(d);

- (11) Agricultural parks; or
- (12) Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that such facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land.

(b) Uses not expressly permitted in subsection (a) shall be prohibited, except the uses permitted as provided in sections 205-6 and 205-8, and construction of single-family dwellings on lots existing before June 4, 1976. Any other law to the contrary notwithstanding, no subdivision of land within the agricultural district with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be approved by a county unless the said A and B lands within the subdivision shall be made subject to the restriction on uses as prescribed in this section and to the condition that the uses shall be primarily in pursuit of an agricultural activity.

Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance covering any land within the agricultural subdivision shall expressly contain the restriction on uses and the condition, as prescribed in this section [~~which~~] that these restriction and condition shall be encumbrances running with the land until such time that the land is reclassified to a land use district other than agricultural district.

If the foregoing requirement of encumbrances running with the land jeopardizes the owner or lessee from obtaining mortgage financing from any of the mortgage lending agencies set forth hereinbelow, and [~~said~~] the requirement is the sole reason for failure to obtain mortgage financing, then such requirement of encumbrances shall, insofar as [~~such~~] the mortgage financing is so jeopardized, be conditionally waived by the appropriate county enforcement officer; provided that [~~such~~] the conditional waiver shall thereafter become effective only in the event that the property is subjected to foreclosure proceedings by the mortgage lender.

The mortgage lending agencies mentioned hereinabove are the Federal Housing Administration, Federal National Mortgage Association, Veterans Administration, Small Business Administration, United States Department of Agriculture, Federal Land Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any other federal, state, or private mortgage lending agency qualified to do business in Hawaii, and their respective successors and assigns.

(c) Within the agricultural district all lands, with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class C, D, E, or U shall be restricted to the uses permitted for agricultural districts as set forth in section 205-5(b).

(d) Notwithstanding any other provision of this chapter to the contrary, golf courses and golf driving ranges approved by a county before July 1, 2005, for development within the agricultural district shall be permitted uses within the agricultural district."

SECTION 4. Section 205-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Unless authorized by special permit issued pursuant to this chapter, only the following uses shall be permitted within rural districts:

- (1) Low density residential uses;
- (2) Agricultural uses; [~~and~~]
- (3) Golf courses, golf driving ranges, and golf-related facilities; and

(4) Public, quasi-public, and public utility facilities.

In addition, the minimum lot size for any low density residential use shall be one-half acre and there shall be but one dwelling house per one-half acre, except as provided for in section 205-2.”

PART II

SECTION 5. Many parts of the state contain pockets of rural communities that are located in the near vicinity of many state highways. These unique communities offer a glimpse of what Hawaii was like before the advent of modern subdivisions.

Historically rural communities in our state were self-contained and did not function as a suburb of a major urban center. Commerce and community business were conducted within their boundaries at a personal level and everyone knew their neighbors. There was no need to venture outside of the community, and a trip to the city was usually reserved for special occasions.

The legislature believes that rural districts are an asset to our state, and by creating more rural districts, citizens will look at their land not just as real estate but as precious communities.

The purpose of this part is to:

- (1) Allow counties to work with the executive officer of the land use commission to develop policy and recommend boundary amendments to expand and enhance the use of rural districts;
- (2) Convene an advisory group for redefining rural districts; and
- (3) Appropriate money to accomplish the purposes of this part.

SECTION 6. (a) Each county’s planning department may conduct a study with the executive officer of the land use commission to review boundaries within its jurisdiction to develop policies and boundary amendment recommendations that would expand and enhance the use of rural districts. The boundary review process shall include but not be limited to:

- (1) Developing recommendations for more effective state and county rural land use policies and development standards; and
- (2) Mapping lands recommended for rural district boundary amendments.

(b) Each county may convene an advisory group or utilize existing general or community planning review processes for redefining rural districts and creating appropriate rural standards for boundary reviews. The advisory group may conduct public hearings in accordance with chapter 92, Hawaii Revised Statutes.

The advisory group may include representatives of county, state, and federal agencies, landowners, farmers and farm organizations, the business community, environmental organizations, native Hawaiian organizations, planning organizations, and community groups.

The advisory group’s review shall include:

- (1) Examining existing state and county rural land use policies and development standards, and the practices used in other states;
  - (2) Proposing amendments to existing statutes to better utilize the rural district for rural settlements and rural town centers;
  - (3) Developing common rural land use principles to guide state and county rural land use policies, including the concepts of rural service centers and rural service areas; and
  - (4) Compiling spatial data and mapping for lands in each county that are suitable for reclassification to rural district using geographic information systems.
- (c) The counties may develop a work plan that provides guidance in:

- (1) Examining existing state and county rural land use policies and development standards and the practices used in other states;
- (2) Developing common rural land use principles to guide state and county rural land use policies, including the concepts of rural service centers and rural service areas;
- (3) Developing recommendations for improving existing state and county rural land use policies to provide flexibility for rural non-agricultural uses and to utilize innovative rural land management tools; and
- (4) Compiling spatial data and mapping for lands in each county that are suitable for reclassification to rural districts using geographic information systems.

The executive officer of the land use commission shall be responsible for any consulting services as may be needed for the boundary review process. The executive officer of the land use commission shall also assist the counties in coordinating working and public informational meetings for their respective counties.

(d) Counties may develop criteria for mapping lands to be recommended for reclassification into rural districts; provided that priority shall be placed on the reclassification of lands that are already subdivided and developed for non-agricultural uses. Counties may further consider long-range land use patterns contained in the county's general, community, or development plans and new rural policy standards developed or considered by the county.

County planning departments may identify areas that have land use and resource characteristics suitable for the new rural district, and counties shall also consult with stakeholders, including property owners, community organizations, and county and state agencies in the mapping process.

(e) Each county may develop procedures for involving the public in reviewing lands for amending rural district boundaries. The procedures shall include a series of public meetings during the policy and mapping phases of the boundary review.

SECTION 7. The county planning departments shall submit any proposed legislation to redefine the rural district to the legislature at least twenty days before the convening of the regular session of 2006.

SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2005-2006 to conduct a study to develop policy and recommend boundary amendments to expand and enhance the use of rural districts.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

### PART III

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval; provided that section 8 shall take effect on July 1, 2005.

(Approved July 7, 2005.)

A Bill for an Act Relating to the Deposit Beverage Container Program.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 342G, Hawaii Revised Statutes, is amended by adding a new section to part VIII to be appropriately designated and to read as follows:

**“§342G- Commercial passenger vessels; exemption.** (a) Notwithstanding any other provision of this part, this part shall not apply to a deposit beverage container that is sold or delivered to an entity operating a commercial passenger vessel when the deposit beverage container is intended for use and consumption on the commercial passenger vessel. The entity operating the commercial passenger vessel shall be exempt from this part only if it has a deposit beverage container recycling plan prescribed or approved by the department.

(b) Recycling plans shall be submitted to the department and shall include the name and address of the recycling facility that is accepting the empty deposit beverage containers.

(c) Deposit beverage containers covered under this exemption shall not be redeemed for the refund value or handling fee.”

SECTION 2. Section 342G-101, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read:

““Commercial passenger vessel” means any domestic or foreign-flagged marine vessel or air carrier used primarily for transporting persons to, from, or within the State. The term does not include:

- (1) Marine vessels authorized to carry fewer than fifty passengers; or
- (2) Marine vessels for hire that do not provide overnight accommodations for at least fifty passengers, determined with reference to the number of lower berths and based on an average of two persons per cabin.

“Patron” means a person who buys a beverage in a deposit beverage container for use or consumption and does not pay the deposit.”

2. By amending the definition of “on-premises consumption” to read:

““On-premises consumption” means ~~to consume~~ the consuming of deposit beverages by a ~~consumer~~ patron immediately and within the area under control of the establishment, including bars, restaurants, passenger ships, and airplanes.”

SECTION 3. Section 342G-113, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Businesses that sell deposit beverages for on-premises consumption, such as hotels, bars, and restaurants, shall collect used deposit beverage containers from the ~~consumer~~; patron and either use a certified redemption center for the collection of containers~~;~~ or become a certified redemption center.”

SECTION 4. Section 342G-115, Hawaii Revised Statutes, is amended to read as follows:

**“§342G-115 Reverse vending machine requirements.** Reverse vending machines may be used by redemption centers to satisfy the requirements of section



342G-113. Reverse vending machines shall accept any type of empty deposit beverage container and pay out the full refund value in either cash or a redeemable voucher for those containers that bear a valid Hawaii refund value. If the reverse vending machine is unable to read the barcode ~~[to calculate the refund value,]~~ then the ~~[department may specify a delayed date in which the]~~ reverse vending ~~[machines may be used.]~~ machine shall reject the container. The reverse vending machine shall be routinely serviced to ensure proper operation and continuous acceptance of empty deposit beverage containers and payment of the refund value.”

SECTION 5. Section 342G-116, Hawaii Revised Statutes, is amended to read as follows:

“~~[§342G-116]~~ **Refusal of refund value payment for a deposit beverage container.** Redemption centers shall refuse to pay the refund value on any broken, corroded, or ~~dismembered~~~~[, flattened]~~ deposit beverage container, or any deposit beverage container ~~[which:]~~ that:

- (1) Contains a ~~[free-flowing]~~ free-flowing liquid;
- (2) Does not properly indicate a refund value; or
- (3) Contains a significant amount of foreign material.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect upon its approval.

(Approved July 7, 2005.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 207**

H.B. NO. 1550

A Bill for an Act Relating to Students.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 302A-1164, Hawaii Revised Statutes, is amended to read as follows:

“~~[§302A-1164]~~ **Self-administration of medication by student and emergency administration permitted.** (a) The department shall permit ~~[the]:~~

- (1) The self-administration of medication by a student for asthma, anaphylaxis, or other potentially life-threatening illnesses; ~~[provided that:]~~ and
- (2) Department employees and agents to volunteer to administer glucagon in an emergency situation to students with diabetes.

~~[written]:~~ ~~(+)~~ (b) The student’s parent or guardian shall provide the department with

- (1) Written authorization for the self-administration of medication or the emergency administration of glucagon;
- (2) ~~[The student’s parent or guardian shall provide the department with written]~~ In the case of self-administration of medication, written certification from the student’s physician stating that the student:
  - (A) Has asthma, anaphylaxis, or another potentially life-threatening illness; and

(B) Is capable of, and has been instructed in, the proper method of self-administration of medication; and

- (3) In the case of emergency administration of glucagon to a student with diabetes, written certification from the student's physician stating that the student has physician's orders that glucagon may be administered by a volunteer.

~~[(3)]~~ (c) The department shall inform the student's parent or guardian in writing that the department and its employees or agents shall not incur any liability as a result of any injury arising from ~~[the self-administration of medication by the student;]~~ compliance with this section.

~~[(4)]~~ (d) The student's parent or guardian shall sign a statement acknowledging that:

~~[(A)]~~ (1) The department and its employees or agents shall not incur any liability as a result of any injury arising from ~~[the self-administration of medication by the student;]~~ compliance with this section; and

~~[(B)]~~ (2) The parent or guardian shall indemnify and hold harmless the department and its employees or agents against any claims arising out of ~~[the self-administration of medication by the student; and]~~ compliance with this section.

~~[(5)]~~ (e) The permission shall be effective for the school year for which it is granted and shall be renewed for each subsequent school year upon the fulfillment of the requirements in ~~[paragraphs (1) through (4);]~~ this section.

~~[(b)]~~ (f) Notwithstanding any other law to the contrary, a student who is permitted to self-administer medication under this section shall be permitted to carry an inhaler or auto-injectable epinephrine, or both, at all times if the student does not endanger the student's person or other persons through the misuse of the inhaler; provided that the department, its employees or agents may confiscate a student's medication, inhaler, or auto-injectable epinephrine if the student's self-administration of the medication exceeds the student's prescribed dosage, or if the student endangers others with the student's medication, inhaler, or auto-injectable epinephrine.

For the purposes of this section, the term "inhaler" includes:

- (1) Metered-dose, breath-actuated, and dry powder inhalers; and
- (2) Spacers and holding chambers.

(g) Any employee or agent who volunteers to administer glucagon in an emergency situation to a student with diabetes shall receive instruction in the proper administration of glucagon by a qualified health care professional. A "qualified health care professional" means a licensed physician, physician assistant, advanced practice registered nurse or registered nurse, or certified diabetes educator. The student's parent or guardian shall supply the school with the glucagon kit required to administer the glucagon. The school shall store the glucagon kit in a secure but accessible location.

~~[(e)]~~ (h) Any person, except for a qualified health care professional providing the training required in subsection (g), who acts in accordance with the requirements of this section shall be immune from any civil or criminal liability arising from these acts, except where the person's conduct would constitute gross negligence, wilful and wanton misconduct, or intentional misconduct."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2005.

(Approved July 8, 2005.)

## ACT 208

A Bill for an Act Relating to Caregiver Consent.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 577, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§577- Affidavit of caregiver consent for minor’s health care.** (a) Except for children placed under the custody of the department of human services, pursuant to proceedings under chapter 587, a caregiver who possesses and presents a notarized affidavit of caregiver consent for a minor’s health care under subsection (b) may consent on behalf of a minor to primary and preventive medical and dental care and diagnostic testing, and other medically necessary health care and treatment. Examination and treatment shall be prescribed by or under the supervision of a physician, advanced practice nurse, dentist, or mental health professional licensed to practice in the State.

(b) An affidavit of caregiver consent for a minor’s health care shall include the following:

- (1) The caregiver’s name and current home address;
- (2) The caregiver’s birthdate;
- (3) The number of the caregiver’s Hawaii driver’s license or state identification card;
- (4) The relationship of the caregiver to the minor;
- (5) The minor’s name;
- (6) The minor’s birthdate;
- (7) The length of time the minor has resided with the caregiver;
- (8) The caregiver’s signature under oath affirming the truth of the matter asserted in the affidavit;
- (9) The signature of the minor’s parent, guardian, or legal custodian consenting to the caregiver’s authority over the minor’s health care; provided that the signature of the minor’s parent, guardian, or legal custodian shall not be necessary if the affidavit states that the caregiver has been unable to obtain the signature of the minor’s parent, guardian, or legal custodian, and includes a statement by the caregiver documenting the attempts to obtain the signature of the minor’s parent, guardian, or legal custodian; and
- (10) A statement, as follows:

“General Notices:

This declaration does not affect the rights of the minor’s parent, guardian, or legal custodian regarding the care, custody, and control of the minor, other than with respect to health care, and does not give the caregiver legal custody of the minor.

The minor’s parent or legal custodian may at any time rescind this affidavit of caregiver consent for a minor’s health care by providing written notification of the rescission to the appropriate health care professional.

A person who relies in good faith on this affidavit of caregiver consent for a minor’s health care has no obligation to conduct any further inquiry or investigation and shall not be subject to civil or criminal liability or to professional disciplinary action because of that reliance.”

## ACT 209

(c) The affidavit of caregiver consent for a minor's health care shall be superseded by written notification from the minor's parent, guardian, or legal custodian to the health care professionals providing services to the minor that the affidavit has been rescinded.

(d) Any person who relies in good faith on the affidavit of caregiver consent for a minor's health care shall:

- (1) Have no obligation to conduct any further inquiry or investigation; and
- (2) Not be subject to civil or criminal liability or to professional disciplinary action because of such reliance.

(e) The consent authorized by this section shall not be applicable for purposes of the Individuals with Disabilities Education Act (20 U.S.C. section 1400 et seq.) or section 504 of the Rehabilitation Act of 1973 (29 U.S.C. section 791).

(f) The caregiver consent for a minor's health care is a separate document and shall serve a purpose distinct from the affidavit for caregiver consent under section 302A-482.

(g) As used in this section, "caregiver" means any person who is at least eighteen years of age and:

- (1) Is related by blood, marriage, or adoption to the minor, including a person who is entitled to an award of custody pursuant to section 571-46(2), but who is not the legal custodian or guardian of the minor; or
- (2) Has resided with the minor continuously during the immediately preceding period of six months or more."

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved July 8, 2005.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 209

S.B. NO. 802

A Bill for an Act Relating to a State Pharmacy Assistance Program.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to create a state pharmacy assistance program within the department of human services that meets the requirements of Title 42 United States Code Section 1396r-8, to provide certain pharmaceutical benefits to certain elderly and disabled individuals, and to facilitate the enrollment and coordination of benefits between the state pharmacy assistance program and the new medicare part D drug benefit program provided by the federal Medicare Modernization Act.

This state pharmacy assistance program will assist eligible elderly and disabled individuals in defraying their cost of medically necessary prescriptions under the new medicare part D drug benefit program.

The department shall allow any willing prescription drug plan approved and certified by the federal centers for medicare and medicaid services to provide the coordination of benefits between the State's medicare prescription drug program and the medicare part D drug benefit. To further ensure that eligible seniors and disabled individuals receive a coordinated benefit, the department or its designee may

provide enrollment assistance to eligible individuals into preferred prescription drug plans.

SECTION 2. Chapter 346, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . STATE PHARMACY ASSISTANCE PROGRAM**

**§346-A Definitions.** As used in this part:

“Asset test” means the asset limits for eligibility in the state pharmacy assistance program as defined by the Medicare Modernization Act and any amendments thereto.

“Contractor” means the person, partnership, or corporate entity that has an approved contract with the department to administer the state pharmacy assistance program as established under this part.

“Department” means the department of human services.

“Enrollee” means a resident of this state who meets the conditions specified in this part and in department rules relating to eligibility for participation in the state pharmacy assistance program and whose application for enrollment in the state pharmacy assistance program has been approved by the department.

“Federal poverty level” means the federal poverty level updated annually in the federal register by the United States Department of Health and Human Services under the authority of Title 42 United States Code Section 9902(2).

“Full coverage prescription drug benefit” means a federally approved prescription drug plan that offers a zero co-payment benefit for medicaid dual eligibles under the medicare part D drug benefit.

“Liquid assets” means assets used in the eligibility determination process as defined by the Medicare Modernization Act.

“Medicaid dual eligible” means a person who is eligible for both medicaid and medicare as defined by the Medicare Modernization Act.

“Medicare Modernization Act” means the federal Medicare Prescription Drug, Improvement and Modernization Act of 2003.

“Medicare part D prescription drug benefit” means the federal prescription benefit provided under the Medicare Modernization Act.

“Prescription drug plan” means a plan provided by non-governmental entities under contract with the federal Centers for Medicare and Medicaid Services to provide prescription benefits under the Medicare Modernization Act.

“Resident” means a person who lives within this state and has a fixed place of residence in this state, with the present intent of maintaining a permanent home in this state for the indefinite future.

**§346-B State pharmacy assistance program.** (a) There is established within the department the state pharmacy assistance program. Provided that there are no federally approved prescription drug plans available in the state that provide a full coverage prescription drug benefit, the state pharmacy assistance program may coordinate the prescription drug coverage with the federal medicare part D prescription drug benefit, including related supplies, as determined by the department, to each resident who meets the eligibility requirements as outlined in section 346-C.

(b) The department may provide enrollment assistance to eligible individuals into the state pharmacy assistance program. Enrollment for medicaid dual eligible persons shall begin no later than October 1, 2005.

(c) The department shall allow any willing prescription drug plan approved by the federal Centers for Medicare and Medicaid Services to provide the coordina-

tion of benefits between the State's medicare prescription drug program and the medicare part D drug benefit.

(d) The department may administer the state pharmacy assistance program or contract with a third party or parties in accordance with chapter 103F to administer any single component or combination of components of the state pharmacy assistance program, including outreach, eligibility, enrollment, claims, administration, rebate negotiations and recovery, and redistribution, in order to coordinate the prescription drug benefits of the state pharmacy assistance program and the federal medicare part D drug benefit.

(e) Any contract with third parties to administer any component of the state pharmacy assistance program shall be established either at no cost to the State, or on a contingency-fee basis and with no up-front costs to the State, as may be negotiated by the department.

(f) Any contract with third parties to administer any component of the state pharmacy assistance program shall prohibit the contractor from receiving any compensation or other benefits from any pharmaceutical manufacturer participating in the state pharmacy assistance program.

(g) A prescription drug manufacturer or labeler that sells prescription drugs in the state may enter into a rebate agreement with the department. The rebate agreement may be agreed upon by the manufacturer or the labeler to make rebate payments to the department each calendar quarter or according to a schedule established by the department.

(h) The department or contractor may negotiate the amount of the rebate required from a manufacturer or labeler in accordance with this part.

(i) The department or contractor may take into consideration the rebate calculated under the medicaid rebate program pursuant to Title 42 United States Code Section 1396r-8, the average wholesale price of prescription drugs, and any other cost data related to prescription drug prices and price discounts.

(j) The department or contractor shall use their best efforts to obtain the best possible rebate amount.

(k) The department may prescribe the application and enrollment procedures for prospective enrollees.

(l) The department shall conduct ongoing quality assurance activities similar to those used in the State's medicaid program.

**§346-C Eligibility.** (a) All residents of the state shall be eligible to participate in the state pharmacy assistance program; provided that the applicant:

- (1) Is a resident of Hawaii;
- (2) Is sixty-five years or older, or is disabled and receiving a social security benefit;
- (3) Has a household income at or below one hundred per cent of the federal poverty level;
- (4) Meets the asset test; and
- (5) Is not a member of a retirement plan who is receiving a benefit from the Medicare Modernization Act.

(b) State pharmacy assistance program applicants who are enrolled in any other public assistance program providing pharmaceutical benefits, other than the Medicare Modernization Act, shall be ineligible for the state pharmacy assistance program as long as they receive pharmaceutical benefits from that other public assistance program, unless the applicant is eligible for medicare. Residents who qualify for, or are enrolled in, the Hawaii RX plus program shall be eligible for the state pharmacy assistance program; provided that they meet all other state pharmacy assistance program requirements.

(c) State pharmacy assistance program applicants who are enrolled in a private sector plan or insurance providing payments for prescription drugs shall be ineligible to receive benefits from the state pharmacy assistance program.

**§346-D Benefits.** (a) For persons meeting the eligibility requirements in section 346-C, the state pharmacy assistance program may pay all or some of the co-payments required under the federal medicare part D pharmacy benefit program, subject to receipt of sufficient rebates pursuant to section 346-B(g), as determined by the department.

(b) The state pharmacy assistance program is the payor of last resort, subject to receipt of sufficient rebates pursuant to section 346-B(g), as determined by the department.

(c) The state pharmacy assistance program shall be funded with state appropriations derived from revenues to the State from rebates paid by pharmaceutical manufacturers pursuant to section 346-B(g), which may affect the level of benefits to program enrollees pursuant to subsection (a) depending on the amount of the rebates received by the State to cover all program benefits and costs of administering the program.

**§346-E Special fund.** (a) There is established within the state treasury to be administered by the department, the state pharmacy assistance program special fund, into which shall be deposited:

- (1) All moneys received from manufacturers that pay rebates as provided in section 346-B(g);
- (2) Appropriations made by the legislature to the fund; and
- (3) Any other revenues designated for the fund.

(b) Moneys in the state pharmacy assistance program special fund may be used for:

- (1) Reimbursement payments to participating pharmacies for co-payments required under the federal medicare part D pharmacy benefit program as provided to state pharmacy assistance program participants;
- (2) The costs of administering the state pharmacy assistance program, including salary and benefits of employees, computer costs, and contracted services as provided in section 346-B(d); and
- (3) Any other purpose deemed necessary by the department for the purpose of operating and administering the state pharmacy program.

All interest on special fund balances shall accrue to the special fund. Upon dissolution of the state pharmacy assistance program special fund, any unencumbered moneys in the fund shall lapse to the general fund.

(c) The department shall expend all revenues received from rebates paid by pharmaceutical manufacturers pursuant to section 346-B(g) to pay for the benefits to enrollees in the state pharmacy assistance program, the costs of administering the program, and reimbursement of medicaid pharmaceutical costs.

**§346-F Administrative rules.** The department shall adopt rules pursuant to chapter 91 necessary for the purposes of this part.

**§346-G Annual reports.** The department shall report the enrollment and financial status of the state pharmacy assistance program to the legislature no later than twenty days prior to the convening of each regular session, beginning with the 2006 regular session.'

SECTION 3. There is appropriated out of the state pharmacy assistance program special fund the sum of \$2,750,000, or so much thereof as may be necessary

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for fiscal year 2005-2006, and the same sum, or so much thereof as may be necessary for fiscal year 2006-2007, to carry out the purposes of this Act.

The sums appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 4. In codifying the new sections added to chapter 346, Hawaii Revised Statutes, by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 5. This Act shall take effect on July 1, 2005.

(Approved July 8, 2005.)

## ACT 210

S.B. NO. 61

A Bill for an Act Relating to Wages.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 387-6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Every employer shall furnish each employee at every pay period a legible printed, typewritten, or handwritten notice showing the employee’s:

- (1) ~~[total]~~ Total hours worked[;];
- (2) ~~[overtime]~~ Overtime hours[;];
- (3) ~~[straight-time]~~ Straight-time compensation[;];
- (4) ~~[overtime]~~ Overtime compensation[;];
- (5) ~~[other]~~ Other compensation[;];
- (6) ~~[total]~~ Total gross compensation[;];
- (7) ~~[amount]~~ Amount and purpose of each deduction[;];
- (8) ~~[total]~~ Total net compensation[;];
- (9) ~~[date]~~ Date of payment[;]; and
- (10) ~~[pay]~~ Pay period covered[-];

provided that in lieu of the printed, typewritten, or handwritten notice required by this subsection and upon receipt of written authorization from the employee, the employer may provide an electronic notice that may be electronically accessed by the employee.”

SECTION 2. Section 388-7, Hawaii Revised Statutes, is amended to read as follows:

“**§388-7 Notification, posting, and records.** Every employer shall:

- (1) Notify ~~[the employer’s employees]~~ each employee in writing, at the time of hiring of the rate of pay, and of the day, hour, and place of payment;
- (2) Notify ~~[the employer’s employees]~~ each employee in writing or through a posted notice maintained in a place accessible to ~~[the employer’s]~~ employees of any changes in the arrangements specified above prior to the time of ~~[such changes;]~~ the change;
- (3) ~~[Make available]~~ Provide to ~~[the employer’s employees]~~ each employee in writing or through a posted notice maintained in a place accessible to ~~[the employer’s]~~ employees, policies with regard to vacation and sick leave;



- (4) Furnish each employee at every payday a legible printed, typewritten, or handwritten record showing the employee's total gross compensation, the amount and purpose of each deduction, total net compensation, date of payment, and pay period covered; and maintain and preserve a copy of ~~[such] the~~ record or its equivalent for a period of at least six years; provided that in lieu of the printed, typewritten, or handwritten record required by this paragraph and upon receipt of written authorization from the employee, the employer may provide an electronic record that may be electronically accessed by the employee that shall be retained by the employer for a period of at least six years;
- (5) Keep posted in a place accessible to ~~[the employer's]~~ employees ~~[such] the~~ notices pertaining to the application of this chapter as shall be prescribed by the director of labor and industrial relations; and
- (6) Make and keep records of all employees which shall include basic employment and earnings records~~;~~ and preserve ~~[such] the~~ records for a period of time and in a manner as the director shall prescribe by rule."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 8, 2005.)

## ACT 211

S.B. NO. 1127

A Bill for an Act Relating to the Public Procurement Code.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 103D-310, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) All offerors, upon award of contract, shall comply with all laws governing entities doing business in the State, including chapters 237, 383, 386, 392, and 393~~, and shall:~~

- (1) ~~Be incorporated or organized under the laws of the State; or~~
- (2) ~~Be registered to do business in the State as a separate branch or division that is capable of fully performing under the contract].~~

Offerors shall produce documents to the procuring officer to demonstrate compliance with this subsection. Any offeror making a false affirmation or certification under this subsection shall be suspended from further offerings or awards pursuant to section 103D-702. The procuring officer shall verify compliance with this subsection for all contracts awarded pursuant to sections 103D-302, 103D-303, 103D-304, ~~[103D-305,]~~ and 103D-306; provided that the attorney general may waive the requirements of this subsection for contracts for legal services if the attorney general certifies in writing that comparable legal services are not available in this State."

SECTION 2. Statutory material to be repealed is bracketed and stricken.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 8, 2005.)

A Bill for an Act Relating to Criminal Trespass.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that persons who enter and unlawfully reside in tents or other temporary shelters in public parks or campgrounds, commonly known as squatters, continue their unlawful acts despite legislative and other efforts to address this problem. Act 50, Session Laws of Hawaii 2004, amended section 708-814, Hawaii Revised Statutes, regarding criminal trespass in the second degree, to include trespass on public property, in addition to commercial premises, to permit prosecution of these acts as petty misdemeanors and imposition of a maximum jail sentence of thirty days.

However, the legislature finds that the amendments made by Act 50 have been broadly used in circumstances not related to squatting. Further legislation is needed to repeal these amendments and establish a new offense more specifically tailored to prosecution of trespass offenses in public parks and recreation areas.

The purpose of this Act is to amend the trespass law to focus on squatters, without exposing others to the risk of prosecution for innocent, unrelated conduct.

SECTION 2. Chapter 708, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§708- Criminal trespass onto public parks and recreational grounds.** (1) A person commits the offense of criminal trespass onto public parks and recreational grounds if the person remains unlawfully in or upon a public park or recreational ground after a request to leave is made by any law enforcement officer, when the request is based upon violation by the person of any term of use specified on a sign or notice posted on the property, or based on violation of any term of use contained in, or the expiration of, any permit relating to the person’s presence on the property.

(2) For the purposes of this section, unless the context requires otherwise: “Law enforcement officer” has the same meaning as in section 710-1000. “Public park or recreational ground” means any park, park roadway, playground, athletic field, beach, shore, beach or shore right-of-way, tennis court, golf course, swimming pool, or other recreational area or facility under control, maintenance, and management of the State or any of the counties.

(3) Criminal trespass onto public parks and recreational grounds is a petty misdemeanor.”

SECTION 3. Section 708-814, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of criminal trespass in the second degree if:

- (a) The person knowingly enters or remains unlawfully in or upon premises that are enclosed in a manner designed to exclude intruders or are fenced; or
- (b) The person enters or remains unlawfully in or upon commercial premises [~~or public property~~] after a reasonable warning or request to leave by the owner or lessee of the commercial premises [~~or public property~~], the owner’s or lessee’s authorized agent, or a police officer; provided that this paragraph shall not apply to any conduct or activity subject to

regulation by the National Labor Relations Act. For the purposes of this paragraph, “reasonable warning or request” means a warning or request communicated in writing at any time within a one-year period inclusive of the date the incident occurred, which may contain but is not limited to the following information:

- (i) A warning statement advising the person that the person’s presence is no longer desired on the property for a period of one year from the date of the notice, that a violation of the warning will subject the person to arrest and prosecution for trespassing pursuant to section 708-814(1)(b), and that criminal trespass in the second degree is a petty misdemeanor;
- (ii) The legal name, any aliases, and a photograph, if practicable, or a physical description, including but not limited to sex, racial extraction, age, height, weight, hair color, eye color, or any other distinguishing characteristics of the person warned;
- (iii) The name of the person giving the warning along with the date and time the warning was given; and
- (iv) The signature of the person giving the warning, the signature of a witness or police officer who was present when the warning was given and, if possible, the signature of the violator.’’

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 8, 2005.)

## ACT 213

S.B. NO. 1816

A Bill for an Act Relating to Student Substance Abuse Assessment Referrals.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 44, Session Laws of Hawaii 2004, required the department of education to refer a student who is subject to suspension for substance abuse to be assessed by a certified substance abuse treatment counselor or professional qualified pursuant to chapter 431M, Hawaii Revised Statutes. The purpose of the assessment is to determine whether the student needs treatment for substance abuse or dependency and whether to refer the student for appropriate treatment services. The outcome of this process determines whether the student will be subject to continued disciplinary action. These mandates were funded in Act 40, Session Laws of Hawaii 2004.

The department of education has indicated that, based on statewide data in recent years for drug and alcohol offenses, the estimated annual costs for the assessments would be \$300,000 to \$500,000.

The purpose of this Act is to clarify the law on student substance assessment referrals.

SECTION 2. Section 302A-1134.6, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

~~“(f) [Prior to implementing any decision to exclude the child from attending school due to a violation of subsection (b) or (c), the child shall be referred to and assessed by a certified substance abuse treatment counselor on a priority basis to determine whether the child needs treatment for substance abuse or dependency. If the assessment determines that the child:~~

- ~~(1) Needs treatment for substance abuse or dependency and:
 
  - ~~(A) If outpatient treatment is immediately available or the child is placed into a residential treatment facility, the child shall not be excluded from school and all disciplinary action shall be deferred; provided that the child:
 
    - ~~(i) Enters into treatment;~~
    - ~~(ii) Complies with the terms and conditions of the treatment program; and~~
    - ~~(iii) Remains in treatment until discharged from treatment.~~

~~If the child completes the treatment program, no disciplinary action based on the original offense shall be taken and all records of disciplinary action relating to the original offense shall be expunged; or~~~~
  - ~~(B) If no treatment program is immediately available, the child shall not be excluded from attending school, but may be transferred to an alternative learning center, pending admission to a treatment program. Disciplinary action shall be deferred in accordance with paragraph (1)(A) during the pendency of the child’s treatment and all records of disciplinary action relating to the original offense shall be expunged upon completion of the treatment program; or~~~~
- ~~(2) Does not need treatment for substance abuse or dependency, disciplinary action of exclusion from school may be taken in accordance with the department’s rules.~~

~~Nothing in this subsection prohibits the principal from suspending the child pursuant to the crisis suspension rules of the department for a period not to exceed ten days, provided the principal commences the referral and assessment process required under this section during the crisis suspension period.] A child determined to be in violation of subsection (b) or (c) shall be subject to the department’s disciplinary rules; provided that:~~

- ~~(1) The child shall be allowed to return to school earlier than the department’s original disciplinary determination; provided that the child gives the school evidence of the following:
  - ~~(A) A substance abuse assessment has been completed; and~~
  - ~~(B) The child is progressing toward clinical discharge from any substance abuse treatment or substance abuse counseling recommended by the substance abuse assessment;~~~~
- ~~(2) If the substance abuse assessment finds that the child does not need substance abuse treatment or substance abuse counseling, the school may allow the child to return to school earlier than originally indicated; provided that:
  - ~~(A) The child provides a certified copy of the assessment; and~~
  - ~~(B) The child’s parent or legal guardian consents to the child receiving follow-up counseling or other student support services to be provided by the department.~~~~

- In determining whether to allow the child to return to school early, the school, at a minimum, shall take into consideration the nature and severity of the offense, the impact of the offense on others, and the age of the offender as well as whether the offender is a repeat offender; and
- (3) For the child's first violation of subsection (b) or (c), if the child provides evidence of clinical discharge from the substance abuse treatment program or substance abuse counseling, all records of disciplinary action relating to the original offense shall be expunged."

SECTION 3. (a) There is established in the department of health for administrative purposes, a student substance abuse assessment and treatment advisory task force to review the process by which a child who violates the zero tolerance policy for drugs and alcohol in public schools is referred for assessment and treatment of substance abuse and excluded from school.

(b) The advisory task force shall consist of nine members appointed without regard to section 26-34, Hawaii Revised Statutes, as follows:

- (1) Two members shall represent the director of health and the administrator of the alcohol and drug abuse division of the department of health;
- (2) Two members shall represent the department of education and shall consist of the superintendent of education or the superintendent's designee and a school administrator to be appointed by the superintendent;
- (3) A member of the house of representatives to be appointed by the speaker of the house of representatives;
- (4) A member of the senate to be appointed by the president of the senate; and
- (5) Three members from the healthcare profession, which may include persons involved with the assessment or treatment of children for substance abuse or dependence, to be appointed jointly by the speaker of the house of representatives and president of the senate.

The advisory task force shall select a chairperson from among its members. The number of members necessary to constitute a quorum to do business shall consist of a majority of all members of the advisory task force. When a quorum is in attendance, the concurrence of a majority of the members in attendance shall make any action of the advisory task force valid.

(c) The advisory task force shall:

- (1) Review the process established by section 302A-1134.6, Hawaii Revised Statutes, as amended by section 14 of Act 44, Session Laws of Hawaii 2004, to determine whether it is working and, if not, why not;
- (2) Review the amendments to section 302A-1134.6, Hawaii Revised Statutes, made by section 2 of this Act, and other applicable federal laws to determine whether the amendments will improve the process;
- (3) Determine what further changes need to be made, including the addition of resources, to improve the assessment and treatment of children in public schools for substance abuse and dependence; and
- (4) Develop a long-range plan for development and implementation of school-based substance abuse treatment programs for middle and high school students. The treatment model shall provide all middle and high school students with access to immediate treatment options for substance abuse or dependency in lieu of disciplinary action.

(d) The department of health shall provide administrative and staff support to the advisory task force; provided that the advisory task force may also request assistance from the department of education and other appropriate state executive agencies in fulfilling the purpose and duties of the advisory task force.

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(e) Members of the advisory task force shall not receive compensation for their services but shall be reimbursed for necessary expenses, including travel expenses, incurred in the performance of their duties under this Act.

(f) The advisory task force shall submit a report of its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2006.

(g) The advisory task force shall cease to exist on June 30, 2006.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon approval; provided that on June 30, 2006, sections 2 and 3 of this Act shall be repealed and section 302A-1134.6(f), Hawaii Revised Statutes, is reenacted in the form in which it read on the day before the approval of this Act.

(Approved July 8, 2005.)

## ACT 214

H.B. NO. 1715

A Bill for an Act Relating to Civil Rights.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to prohibit discriminatory practices in real property transactions (housing) on the basis of sexual orientation, gender identity, or expression. Presently, employment is one of the few areas in which discrimination because of sexual orientation is prohibited. Just as a person should not be denied a job because of the person's sexual orientation (heterosexual, homosexual, or bisexual), a person should not be denied a home because of the person's sexual orientation, gender identity, or expression.

Although this Act contains a narrow exception for housing accommodations at religiously affiliated institutions of higher education, this Act should not be interpreted to undermine the State's commitment to civil rights. Housing laws presently permit landlords to follow their individual value systems in selecting tenants to live in the landlords' own homes (or duplexes). But persons engaged in the business of providing rental housing cannot be allowed to ignore civil rights laws that apply to all. The religious accommodation in this Act is intended primarily to grant private homeowners who open their homes to university students a degree of certainty that the religious institution's student housing program criteria will withstand challenges.

SECTION 2. Section 515-2, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

““Gender identity or expression” includes a person's actual or perceived gender, as well as a person's gender identity, gender-related self-image, gender-related appearance, or gender-related expression, regardless of whether that gender identity, gender-related self-image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person's sex at birth.

“Sexual orientation” means having a preference for heterosexuality, homosexuality, or bisexuality, having a history of any one or more of these preferences, or

being identified with any one or more of these preferences. “Sexual orientation” shall not be construed to protect conduct otherwise proscribed by law.”

SECTION 3. Section 515-3, Hawaii Revised Statutes, is amended to read as follows:

**“§515-3 Discriminatory practices.** It is a discriminatory practice for an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesperson, because of race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or ~~[HIV- (}human immunodeficiency virus{)}~~ infection:

- (1) To refuse to engage in a real estate transaction with a person;
- (2) To discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;
- (3) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;
- (4) To refuse to negotiate for a real estate transaction with a person;
- (5) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is [sø] available, or to fail to bring a property listing to the person’s attention, or to refuse to permit the person to inspect real property, or to steer a person seeking to engage in a real estate transaction;
- (6) To print, circulate, post, or mail, or cause to be [sø] published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, [which] that indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;
- (7) To offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith;
- (8) To refuse to engage in a real estate transaction with a person or to deny equal opportunity to use and enjoy a housing accommodation due to a disability because the person uses the services of a guide dog, signal dog, or service animal; provided that reasonable restrictions or prohibitions may be imposed regarding excessive noise or other problems caused by those animals. For the purposes of this paragraph:

“Blind” shall be as defined in section 235-1;

“Deaf” shall be as defined in section 235-1;

“Guide dog” means any dog individually trained by a licensed guide dog trainer for guiding a blind person by means of a harness attached to the dog and a rigid handle grasped by the person;

“Reasonable restriction” shall not include any restriction that allows any owner or person to refuse to negotiate or refuse to engage in a real estate transaction; provided that as used in this paragraph, the “reasonableness” of a restriction shall be examined by giving due consideration to the needs of a reasonable prudent person in the same or similar circumstances. Depending on the circumstances, a “reasonable restriction” may require the owner of the service animal, guide dog, or signal dog to comply with one or more of the following:

- (A) Observe applicable laws including leash laws and pick-up laws;
- (B) Assume responsibility for damage caused by the dog; or

- (C) Have the housing unit cleaned upon vacating by fumigation, deodorizing, professional carpet cleaning, or other method appropriate under the circumstances.

The foregoing list is illustrative only, and neither exhaustive nor mandatory;

“Service animal” means any animal that is trained to provide those life activities limited by the disability of the person;

“Signal dog” means any dog that is trained to alert a deaf person to intruders or sounds;

- (9) To solicit or require as a condition of engaging in a real estate transaction that the buyer, renter, or lessee be tested for human immunodeficiency virus infection [(HIV)], the causative agent of acquired immunodeficiency syndrome [(AIDS)];
- (10) To refuse to permit, at the expense of a person with a disability, reasonable modifications to existing premises occupied or to be occupied by the person if modifications may be necessary to afford the person full enjoyment of the premises. A real estate broker or salesperson, where it is reasonable to do so, may condition permission for a modification on the person agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;
- (11) To refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a housing accommodation;
- (12) In connection with the design and construction of covered multifamily housing accommodations for first occupancy after March 13, 1991, to fail to design and construct housing accommodations in such a manner that:
  - (A) The housing accommodations have at least one accessible entrance, unless it is impractical to do so because of the terrain or unusual characteristics of the site; and
  - (B) With respect to housing accommodations with an accessible building entrance:
    - (i) The public use and common use portions of the housing accommodations are accessible to and usable by disabled persons;
    - (ii) Doors allow passage by persons in wheelchairs; and
    - (iii) All premises within covered multifamily housing accommodations contain an accessible route into and through the housing accommodations; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; reinforcements in the bathroom walls allow installation of grab bars; and kitchens and bathrooms are accessible by wheelchair; or
- (13) To discriminate against or deny a person access to, or membership or participation in any multiple listing service, real estate broker’s organization, or other service, organization, or facility involved either directly or indirectly in real estate transactions, or to discriminate against any person in the terms or conditions of such access, membership, or participation.”

SECTION 4. Section 515-4, Hawaii Revised Statutes, is amended to read as follows:



“**§515-4 Exemptions.** (a) Section 515-3 does not apply:

- (1) To the rental of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other if the lessor resides in one of the housing accommodations; or
- (2) To the rental of a room or up to four rooms in a housing accommodation by an individual if the individual resides therein.

(b) Nothing in section 515-3 shall be deemed to prohibit refusal, because of sex, including gender identity or expression, sexual orientation, or marital status, to rent or lease housing accommodations:

- (1) Owned or operated by a religious institution and used for church purposes as that term is used in applying exemptions for real property taxes; or
- (2) Which are part of a religiously affiliated institution of higher education housing program which is operated on property that the institution owns or controls, or which is operated for its students pursuant to Title IX of the Higher Education Act of 1972.

~~[(b)]~~ (c) Nothing in this chapter regarding familial status or age shall apply to housing for older persons as defined by 42 United States Code section 3607(b)(2).”

SECTION 5. Section 515-5, Hawaii Revised Statutes, is amended to read as follows:

“**§515-5 Discriminatory financial practices.** It is a discriminatory practice for a person, a representative of such person, or a real estate broker or salesperson, to whom an inquiry or application is made for financial assistance in connection with a real estate transaction or for the construction, rehabilitation, repair, maintenance, or improvement of real property, because of race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or ~~[HIV-(]human immunodeficiency virus[)]~~ infection:

- (1) To discriminate against the applicant;
- (2) To use a form of application for financial assistance or to make or keep a record or inquiry in connection with applications for financial assistance ~~[which] that~~ indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination unless ~~[such] the~~ records are required by federal law;
- (3) To discriminate in the making or purchasing of loans or the provision of other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling, or the making or purchasing of loans or the provision of other financial assistance secured by residential real estate; or
- (4) To discriminate in the selling, brokering, or appraising of residential real property.”

SECTION 6. Section 515-6, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Every provision in an oral agreement or a written instrument relating to real property ~~[which] that~~ purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof to individuals because of race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or ~~[HIV-(]human immunodeficiency virus[)]~~ infection, is void.

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(b) Every condition, restriction, or prohibition, including a right of entry or possibility of reverter, [which] that directly or indirectly limits the use or occupancy of real property on the basis of race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or [HIV] human immunodeficiency virus infection is void, except a limitation, on the basis of religion, on the use of real property held by a religious institution or organization or by a religious or charitable organization operated, supervised, or controlled by a religious institution or organization, and used for religious or charitable purposes.”

SECTION 7. Section 515-7, Hawaii Revised Statutes, is amended to read as follows:

“**§515-7 Blockbusting.** It is a discriminatory practice for a person, representative of a person, or a real estate broker or salesperson, for the purpose of inducing a real estate transaction from which the person, representative, or real estate broker or salesperson may benefit financially, because of race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or [HIV] human immunodeficiency virus infection:

- (1) To represent that a change has occurred or will or may occur in the composition of the owners or occupants in the block, neighborhood, or area in which the real property is located[;]; or
- (2) To represent that this change will or may result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools in the block, neighborhood, or area in which the real property is located.”

SECTION 8. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect upon its approval.

(Approved July 11, 2005.)

## ACT 215

S.B. NO. 1732

A Bill for an Act Making an Appropriation for a Local Flood Warning System for Lake Wilson.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Flooding is a natural hazard that can occur at any time. The frequency and magnitude of flooding can vary from minor flooding causing only inconvenience, to major flooding resulting in loss of life and extensive damage to

agriculture, industry, transportation, and commercial and residential segments of society.

The purpose of a flood warning system is to provide officials with advance information that can be translated into response actions to save lives. An adequate local flood warning system is comprised of community volunteers; rainfall, river, and other hydrologic gauges; a communications network; and a local flood coordinator responsible for issuing flood warnings. An adequate flood warning system would also increase public awareness of the threat of floods and improve public response to flood warnings.

The United States Geological Survey will install a flood warning system at Lake Wilson to provide advance information on an impending flood. The United States Geological Survey will work with the National Weather Service to issue flood warnings and, with the Oahu civil defense agency and Honolulu police department, will help ensure the timely evacuation of residents living downstream from Lake Wilson. However, the State must appropriate matching funds for the purchase of stream gauges and the operation and maintenance of the flood warning system.

The total purchase and installation cost of the stream gauges for the system is \$100,000, of which the State would be responsible for half. The annual operation and maintenance cost for the flood warning system is \$50,000, with the State matching half. It is anticipated that the annual operation and maintenance cost for the flood warning system will be an ongoing expense because such systems require regular upkeep.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$19,000, or so much thereof as may be necessary for fiscal year 2005-2006, and the sum of \$20,000, or so much thereof as may be necessary, for fiscal year 2006-2007, for the purchase and installation of stream gauges and operation and maintenance of a flood warning system for Lake Wilson; provided that no funds shall be made available under this Act unless dollar-for-dollar federal matching funds for this purpose are first made available.

SECTION 3. The sums appropriated shall be expended by the department of defense for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 2005.

(Became law on July 12, 2005, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 216

S.B. NO. 1427

A Bill for an Act Relating to Procurement of High Energy Efficient Vehicles.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the state vehicle fleet totaled almost five thousand vehicles in 2003. Therefore, if annual vehicle purchases were subject to efficiency requirements, the economic benefits to the State would have been substantial. For example, the net present value of fuel savings over a vehicle's fourteen-year lifetime at the government discount rate of three per cent is approximately \$8,200. This far exceeds the incremental costs of approximately \$3,200 for the most advanced efficiency vehicles, equating to \$5,000 for every high-energy efficient vehicle purchased. The same savings could also be realized for existing off-

the-shelf hybrid gas-electric vehicles, particularly in light of the high gasoline prices in Hawaii.

The legislature finds that it is important to recognize life-cycle benefits in state procurement policies.

SECTION 2. Chapter 103D, Hawaii Revised Statutes, is amended by adding a new section to part IV to be appropriately designated and to read as follows:

**“§103D- Highly energy-efficient vehicles.** (a) The procurement policy for all agencies purchasing or leasing motor vehicle fleets shall be to obtain alternative fuel vehicles. Beginning January 1, 2006, all state agencies are directed to procure increasing percentages of alternative fuel vehicles as part of their annual vehicle acquisition plans, which shall be as follows:

- (1) By January 1, 2007, at least twenty per cent of newly purchased light-duty vehicles acquired by each agency shall be alternative fuel vehicles;
- (2) By January 1, 2009, at least forty per cent of newly purchased light-duty vehicles acquired by each agency shall be alternative fuel vehicles; and
- (3) For each year subsequent to January 1, 2009, the percentage of alternative fuel vehicles newly purchased shall be five percentage points higher than the previous year, until at least sixty per cent of each agency’s newly purchased, light-duty vehicles are alternative fuel vehicles.

(b) For purposes of this section:

“Agency” means a state agency, office, or department.

“Alternative fuel vehicle” means a vehicle that:

- (1) Is powered primarily through the use of an electric battery or battery pack that stores energy produced by an electric motor through regenerative braking to assist in vehicle operation;
- (2) Is propelled by power derived from one or more cells converting chemical energy directly into electricity by combining oxygen with hydrogen fuel that is stored on board the vehicle in any form; or
- (3) Draws propulsion energy from onboard sources of stored energy generated from an internal combustion or heat engine using combustible fuel and a rechargeable energy storage system.

(c) Agencies may offset the purchase requirements for alternative fuel vehicles by successfully demonstrating percentage improvements in overall light-duty vehicle fleet mileage economy. The offsets shall be measured against the fleet average mileage economy using calendar year 2004 as a baseline, on a percentage-by-percentage basis.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Became law on July 12, 2005, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Cruise Ships.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 342D, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . DISCHARGES FROM COMMERCIAL PASSENGER VESSELS**

**§342D-A Definitions.** As used in this part:

“Commercial passenger vessel” means a vessel that carries passengers for hire. The term does not include a vessel:

- (1) Authorized to carry fewer than fifty passengers;
- (2) That does not provide overnight accommodations for at least fifty passengers for hire, determined with reference to the number of lower berths and based on an average of two persons per cabin; or
- (3) Operated by the United States or a foreign government.

“Discharge” means any release, however caused, from a commercial passenger vessel, and includes any escape, disposal, spilling, leaking, pumping, emitting, or emptying.

“Hazardous substance” has the same meaning as defined in section 342D-38.

“Hazardous waste” has the same meaning as defined in section 342J-2.

“Large commercial passenger vessel” means a commercial passenger vessel that provides overnight accommodations for two hundred fifty or more passengers for hire, determined with reference to the number of lower berths and based on an average of two persons per cabin.

“Marine waters of the State” means those waters between the shoreline of the state and any point three nautical miles from the shoreline of the state.

“Offloading” means the removal of a hazardous substance, hazardous waste, or nonhazardous solid waste from a commercial passenger vessel onto or into a controlled storage, processing, or disposal facility or treatment works.

“Other wastewater” means sewage that is stored in or transferred to a ballast tank or other holding area on the vessel that may not be customarily used for storing sewage.

“Passengers for hire” means vessel passengers for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.

“Sewage” means human body wastes and the wastes from toilets and other receptacles intended to receive or retain human body waste.

“Small commercial passenger vessel” means a commercial passenger vessel that provides overnight accommodations for two hundred forty-nine or fewer passengers for hire, determined with reference to the number of lower berths and based on an average of two persons per cabin.

“Treated sewage” means sewage that meets all applicable effluent limitation standards and processing requirements of the Federal Water Pollution Control Act, as amended, and regulations adopted under the same.

“Untreated sewage” means sewage that is not treated sewage.

“Vessel” means any form or manner of watercraft, other than a seaplane on the water, whether or not capable of self-propulsion.

“Voyage” means a vessel trip to or from one or more ports of call in the state with the majority of the passengers for hire completing the entire vessel trip. A vessel trip involving stops at more than one port of call is considered a single voyage so long as the majority of passengers for hire complete the entire trip.

“Wastewater” shall have the same meaning as “other wastewater”.

**§342D-B Prohibited discharges; limitations on discharges.** (a) Except as provided in subsection (g), a person may not discharge untreated sewage from a commercial passenger vessel into the marine waters of the state.

(b) Except as provided in subsection (g) or section 342D-K, a person shall not discharge wastewater from a commercial passenger vessel into the marine waters of the state that has suspended solids greater than one hundred milligrams per liter or a fecal coliform count greater than forty colonies per one hundred milliliters except that the department, by rule, may adopt a protocol for retesting for fecal coliform, if this discharge limit for fecal coliform is exceeded, under which a discharger will be considered to be in compliance with the fecal coliform limit if the geometric mean of fecal coliform count in the samples considered under the protocol does not exceed forty colonies per one hundred milliliters. Upon submission by the owner or operator of a large commercial passenger vessel of a plan for interim protective measures, the department shall extend the time for compliance of that vessel with this subsection for a period of time that ends not later than December 31, 2006. Upon submission by the owner or operator of a small commercial passenger vessel of a plan for interim protective measures, the department shall extend the time for compliance of that vessel with this subsection.

(c) The department, by rule, may establish numeric or narrative standards for other parameters for wastewater discharged from commercial passenger vessels that are more stringent than the effluent limitation standards and processing requirements of the Federal Water Pollution Control Act, as amended, and regulations adopted under the same. In adopting rules under this subsection, the department shall consider the best available scientific information on the environmental effects of the regulated discharges, the materials and substances handled on the vessels, vessel movement effects, and the availability of new technologies for wastewater.

(d) Except as provided in subsections (f) and (g) or section 342D-K, a person shall not discharge wastewater from a large commercial passenger vessel into the marine waters of the state unless:

- (1) The vessel is underway and proceeding at a speed of not less than six knots;
- (2) The vessel is at least one nautical mile from the nearest shore, except in areas designated by the department;
- (3) The discharge complies with all applicable vessel effluent standards established under federal and state law; provided that the standards established under federal law may be adopted by rule by the department; and
- (4) The vessel is not in an area where the discharge of wastewater is prohibited.

(e) Except as provided in subsection (g) or section 342D-K, a person may not discharge sewage from a small commercial passenger vessel unless the sewage has been processed through a properly operated and properly maintained marine sanitation device.

(f) Subsection (d)(1) and (2) do not apply to a discharge permitted under federal law.

(g) Subsections (a) to (e) do not apply to discharges made for the purpose of securing the safety of the commercial passenger vessel or saving life at sea if all

reasonable precautions have been taken for the purpose of preventing or minimizing the discharge.

**§342D-C Prohibited air emissions.** (a) No person shall operate an incinerator of a large commercial passenger vessel in any Hawaiian port for the combustion of any waste materials.

(b) Except as provided under section 342D-F, large commercial passenger vessels shall limit visible emissions, excluding condensed water vapor, to no more than twenty per cent opacity for periods of time exceeding six minutes in any sixty-minute period except for the following:

- (1) When the ship is maneuvering to or from the dock or anchor;
- (2) In the event of a navigational or safety concern on the ship; or
- (3) In the event of an equipment failure; provided that the cruise line shall upon request, provide information to the department that describes the subject equipment, malfunction, corrective actions taken, and the start and end times of the malfunctioning period.

**§342D-D Information-gathering requirements.** (a) Except as provided under section 342D-K, the owner or operator of a commercial passenger vessel shall maintain records and, upon request of the department, provide to the department a report, with copies of the records related to the period of operation in the marine waters of the state, detailing the dates, times, and locations, and the volumes or flow-rates of any discharge of sewage or other wastewater into the marine waters of the state, or the opacity of air emissions.

(b) Except as provided under section 342D-K, while a commercial passenger vessel is present in the marine waters of the state, the owner or operator of the vessel shall collect routine samples of the vessel's treated sewage and other wastewater that are being discharged into the marine waters of the State with a sampling technique approved by the department before the sample is collected. The number of routine samples for each vessel to be collected under this subsection shall be the greater of two per calendar year or the number of samples required to be collected under federal laws and regulations for sewage or other wastewater discharges.

(c) Except as provided under section 342D-K, while a commercial passenger vessel is present in the marine waters of the State, the department through an independent contractor may collect additional samples of the vessel's treated sewage that are being discharged into the marine waters of the State, or monitor the opacity of air emissions.

(d) Except as provided under section 342D-K, the owner or operator of a vessel required to collect samples under subsection (b) shall, as required by the department, have the samples tested. Tests required may include tests for fecal coliform, ammonia, residual chlorine, pH (degree of acidity or alkalinity), chemical oxygen demand, biochemical oxygen demand, total suspended solids, and any other parameters as required by the department. An analytical testing method approved by the department before the testing is conducted shall be used. A laboratory used for testing under this subsection shall agree not to disclose the testing results to any person other than to the department, the United States Coast Guard, or the owner or operator of the vessel.

(e) The owner or operator of a commercial passenger vessel shall pay for all routine sampling under subsection (b), additional sampling under subsection (c), and for the testing of routine samples.

(f) If the owner or operator of a commercial passenger vessel, when complying with another state or federal law that requires substantially equivalent information gathering, has gathered the type of information required under subsection (a), (b), or (d), the owner or operator shall be considered to be in compliance

with that subsection so long as the information is also provided to the department. The department shall establish, by rule, requirements for determining substantially equivalent information gathering.

**§342D-E Recordkeeping requirements.** An owner or operator subject to section 342D-D shall record the information required to be gathered under that section and shall maintain the records for three years after the date the information was gathered.

**§342D-F Reporting requirements.** (a) An owner or operator of a commercial passenger vessel who becomes aware of a discharge in violation of section 342D-B shall immediately report that discharge to the department. The report shall not be deemed to be privileged information.

(b) Before operating a commercial passenger vessel in the marine waters of the State, the owner or operator of the vessel shall provide to the department a plan that describes the vessel's policies and procedures for:

- (1) Offloading in the state or disposing into the marine waters of the state of nonhazardous solid waste other than sewage; and
- (2) Offloading of hazardous waste or a hazardous substance from the vessel while the vessel is operating in the marine waters of the state to the extent that the offloading is not covered by subsection (d).

(c) Within twenty-one days after the testing required under section 342D-D(d), the owner or operator of a commercial passenger vessel shall submit a written report to the department that contains the measurements required under section 342D-D(d) and describes the sampling technique and analytical testing methods used. The information in the report required under this subsection may be provided by referring to, and including copies of, other reports that are required by substantially equivalent state or federal reporting requirements. The department shall establish, by rule, requirements for determining substantially equivalent information gathering.

(d) If the owner or operator of a commercial passenger vessel operating in the marine waters of the state is required by the laws of the United States to file a report or provide notice of a discharge or offloading of a hazardous waste or hazardous substance that was generated, discharged, or offloaded while the vessel was operating in the marine waters of the state, the owner or operator shall submit to the department a copy of the report or notice within twenty-one days after having provided the report or notice to an agency of the United States.

(e) If the owner or operator of a commercial passenger vessel operating in the marine waters of the state is required by the administrator of the Environmental Protection Agency or the secretary of the federal department in which the United States Coast Guard is operating to collect samples and test sewage or opacity of air emissions and keep records of the sampling and testing, then the owner or operator, within twenty-one days after the sewage or opacity of air emissions is tested, shall submit to the department a copy of the records.

(f) Upon request of the department, the information required under this section shall be submitted electronically.

(g) This section does not relieve the owner or operator of a commercial passenger vessel from other applicable reporting requirements of state or federal law.

(h) The requirements of this section are subject to alternative terms and conditions established under section 342D-K.

**§342D-G Memorandum of understanding; recognition program.** (a) Nothing contained in this part shall prevent the State from:



- (1) Entering into voluntary agreements with any owners or operators of commercial passenger vessels, or their representatives, for the purpose of controlling pollution outside the marine waters of the state; or
  - (2) Adopting pollution controls more stringent than those contained in this part.
- (b) The department may engage in efforts to encourage and recognize superior environmental protection efforts made by the owners or operators of commercial passenger vessels that exceed the requirements established by law.

**§342D-H Exemption for vessels in innocent passage.** This part does not apply to a commercial passenger vessel that operates in the marine waters of the state solely in innocent passage. For purposes of this section, a vessel is engaged in innocent passage if its operation in marine waters of the state, regardless of whether the vessel is a United States or foreign-flag vessel, would constitute innocent passage under the United Nations Convention on the Law of the Sea 1982, December 10, 1982, United Nations Publication No. E.83.V.5, 21 I.L.M. 1261 (1982), were the vessel a foreign-flag vessel.

**§342D-I Activities of the department.** The department may engage in the following activities relating to commercial passenger vessels operating in the marine waters of the state:

- (1) Direct in-water monitoring of discharges or releases of sewage and direct monitoring of the opacity of air emissions from those vessels;
- (2) Monitoring and studying of direct or indirect environmental effects of those vessels; and
- (3) Researching ways to reduce effects of those vessels on marine waters and other coastal resources.

**§342D-J Fine schedules for illegal discharges.** (a) Any person who fails to comply with any requirement of this part shall be subject to the fines established by the department pursuant to subsection (b).

(b) The department shall by rule under chapter 91, establish fines for the failure to comply with any requirement of this part.

**§342D-K Alternative terms and conditions of vessel discharges.** (a) The department may establish alternative terms and conditions of vessel discharges applicable to an owner or operator of a vessel who cannot practicably comply with the standard terms and conditions of vessel discharges under sections 342D-B, 342D-C, 342D-D, and 342D-F or who wishes to use or test alternative environmental protection equipment or procedures. Except as specified in alternative terms and conditions set by the department under this subsection, the alternative terms and conditions of vessel discharges must require compliance with the standard terms and conditions of vessel discharges under sections 342D-B, 342D-C, 342D-D, and 342D-F. The department, on a case-by-case basis, may set alternative terms and conditions of vessel discharges if:

- (1) The vessel owner or operator demonstrates to the department's reasonable satisfaction that equivalent environmental protection can be attained through other terms or conditions appropriate for the specific configuration or operation of the vessel;
- (2) The vessel owner or operator agrees to make necessary changes to the vessel to allow it to comply with the standard terms and conditions of vessel discharges under sections 342D-B, 342D-C, 342D-D, and 342D-F but demonstrates to the department's reasonable satisfaction that additional time is needed to make the necessary changes; or

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(3) An experimental technology or method for pollution control of a discharge is being used or is proposed as one of the alternative terms and conditions of vessel discharges, and the department determines that the experimental technology or method has a reasonable likelihood of success in providing increased protection for the environment.

(b) Alternative terms and conditions of vessel discharges approved by the department under subsection (a), if determined appropriate by the department, may include a waiver by the department of portions of the requirements of sections 342D-B, 342D-C, and 342D-D for the time period that the department determines to be appropriate.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, that can be given effect without the invalid provision or application and to this end the provisions of this Act are severable.

SECTION 4. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 5. This Act shall take effect on July 1, 2005.

(Became law on July 12, 2005, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

## ACT 218

H.B. NO. 98

A Bill for an Act Relating to Kahului Harbor.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 188-34, Hawaii Revised Statutes, is amended to read as follows:

**“§188-34 Fishing in Honolulu harbor, Hilo harbor, Kahului harbor, restricted.** (a) It is unlawful to take or kill fish by means of any draw, drag, or seine net in the waters of the harbor of Honolulu; provided that commercial marine licensees as defined in chapter 187A may take bait fish by means of any draw, drag, or seine net during periods scheduled by the harbor master.

(b) It is unlawful to take or kill fish by means of any net in the waters of that portion of the bay of Hilo bounded by the breakwater, a line from the outer end of the breakwater to Alealea Point, and the shoreline from Alealea Point to the inshore end of the breakwater[.]; provided that commercial marine and pond operators with appropriate licenses issued by the department of land and natural resources may take bait fish or pua, or persons may use throw net, opae net, crab net, or nehu net not longer than fifty feet to take nehu for family consumption or bait purposes.

(c) It is unlawful to take or kill fish by means of any net in the waters of Kahului harbor; provided that persons may use throw net, opae net, crab net, or nehu net not longer than fifty feet to take nehu for family consumption or bait purposes.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on December 31, 2006.

(Became law on July 12, 2005, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 219

H.B. NO. 1476

A Bill for an Act Relating to North Kohala.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 166, Session Laws of Hawaii 1992 (Act 166), now codified as section 6E-38.5, Hawaii Revised Statutes, sought to preserve and protect a cluster of historical sites in North Kohala on the island of Hawaii. The sites included the Mo'okini Luakini, Kamehameha birthsite, Kukuipahu Heiau, and the historical sites at Mahukona. Collectively, this cluster of sites is known as the Kohala historical sites state monument. The monument was to be used for educational and cultural purposes to be enjoyed by the public.

When Act 166 was enacted, the Mo'okini Luakini, Kamehameha birthsite, and Kukuipahu Heiau were already owned by the State. Act 166 further mandated that the following real property be included to ensure the unimpaired preservation of the visual, cultural, and historical aspect of the monument:

- (1) Historical sites at Mahukona; and
- (2) Any additional land surrounding all of the monument sites to preserve and protect them with adequate buffers and provide public access, including but not limited to those lands running along the coast between Huinamaka and Kalaelimukoko and those lands mauka of the Mo'okini Heiau encompassing the area formerly used to house the Mo'okini priests and family gravesites.

The additional real property was to be acquired by the State through gifts or land exchanges and designated by the board of land and natural resources as part of the monument.

In the years following Act 166, the State made unsuccessful attempts to acquire the lands adjacent to the monument from the private owner through either a purchase or land exchange. These adjacent lands are necessary to provide public access to the monument as specified in Act 166.

The legislature finds that the purchase of the lands adjacent to the monument is necessary to provide public access to the Kohala historical sites state monument, including the Mo'okini Heiau. The legislature further finds that the State's acquisition of this land will protect the area by providing adequate buffers as authorized by Act 166.

Kamehameha Schools is currently in the process of negotiating for the acquisition of one hundred twenty-five acres of land surrounding the Mo'okini Heiau. This represents exactly one-half of the desired buffer acreage and would provide an estimated open space of at least one hundred yards to the nearest boundary. Additionally, Kamehameha Schools is also considering the purchase of an additional thirty-seven acres for a total of one hundred sixty-two acres, leaving a balance of eighty-eight acres of the total two hundred fifty originally deemed necessary as a buffer.

## ACT 219

The purpose of this Act is to direct the department of land and natural resources to:

- (1) Determine the adequacy of the one hundred sixty-two acres to fulfill the buffer and public access requirements to the Kohala historical sites state monument, including the Mo'okini Heiau; and
- (2) If the acreage is deemed insufficient, renew its efforts to acquire the remaining eighty-eight acres through land exchange.

The legislature finds that the acquisition of these lands will greatly benefit the public. The legislature further finds that it would be in the public's interest for the department of land and natural resources to protect and preserve the lands in compliance with the terms of the deeds granting the Mo'okini Heiau site and the Kamehameha birthsite to the State.

SECTION 2. The two hundred fifty acres of land adjacent to the Kohala historical sites state monument deemed necessary to provide the buffer and public access are described as follows:

- (1) A railroad right-of-way parcel, identified as tax map key number 5-6-01:27;
- (2) A roadway access over and across parcels identified by tax map key numbers 5-5-05:04 and 5-5-05:05 to provide access to the Mo'okini foundation parcel identified as tax map key number 5-5-05:03;
- (3) Existing graded roadway leading from the Mo'okini foundation parcel to the Mo'okini Heiau parcel identified as tax map key number 5-5-05:20, between the Mo'okini Heiau and the Kamehameha birthplace parcel identified as tax map key number 5-5-05:06, and between the Kamehameha birthplace site and the Mo'okini foundation parcel; and
- (4) The buffer area consisting of the following tax map key parcels in North Kohala on the island of Hawaii:

|                   |                   |
|-------------------|-------------------|
| (A) (3) 5-5-05:02 | 21.710 acres;     |
| (B) (3) 5-5-05:04 | 37.000 acres;     |
| (C) (3) 5-5-05:05 | 26.693 acres;     |
| (D) (3) 5-5-05:14 | 4.550 acres;      |
| (E) (3) 5-5-05:17 | 99.812 acres;     |
| (F) (3) 5-5-05:30 | 20.022 acres;     |
| (G) (3) 5-5-05:31 | 20.303 acres; and |
| (H) (3) 5-5-05:32 | 20.389 acres.     |

The acquisition of these lands is necessary to provide, preserve, and protect public access to the Kohala historical sites state monument.

SECTION 3. Kamehameha Schools is presently negotiating for the acquisition of one hundred twenty-five acres, and considering purchasing an additional thirty-seven acres of the two hundred fifty acres identified in section 2 and deemed necessary to provide the buffer and public access to the historical sites. The department of land and natural resources shall:

- (1) Determine whether the one hundred sixty-two acres that may be acquired by Kamehameha Schools are adequate to provide an adequate buffer and public access;
- (2) If this acreage is found insufficient, renew its efforts to acquire the remaining eighty-eight acres through land exchange; and
- (3) Consult with Mo'okini Luakini, Inc., and Kamehameha Schools before making its determination.

SECTION 4. This Act shall take effect upon its approval.

(Became law on July 12, 2005, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 220

H.B. NO. 125

A Bill for an Act Relating to Ocean Resources.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Outrigger canoe paddling developed and spread across the coastal cultures of the Pacific Rim about thirty thousand years ago, and played an integral part in the survival and transmigration of these ancient cultures.

Now, over a thousand years later, Hawaiian outrigger canoes have evolved into sleek racing boats. The first formal association, the Hawaiian Canoe Racing & Surf Association, chartered in 1950, is now known as the Hawaiian Canoe Racing Association (HCRA). There are now numerous organizations and numerous Hawaiian outrigger canoe-racing clubs throughout the Hawaiian islands.

Hawaiian outrigger canoe racing has obtained global popularity. Hawaiian outrigger canoe racing in Hawaii draws teams from England, Hungary, Germany, Japan, Canada, Tonga, Samoa, Guam, Tahiti, Australia, and the continental United States. However, perpetuation of the sport comes with considerable expense.

The sport of Hawaiian outrigger canoe paddling has significant historical and cultural importance to the State. The expansion of the sport is in no small part due to the numerous individuals and organizations that have contributed their time, money, and energies to perpetuate and inspire its continued growth. The legislature believes that these selfless individuals and organizations should be recognized, and that Hawaiian outrigger canoe paddling, the official team sport of the State, must be supported and encouraged.

The purpose of this Act is to authorize Hawaiian outrigger canoe clubs registered with the HCRA to keep their canoes on state shoreline areas.

SECTION 2. Chapter 200, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§200- Hawaiian outrigger canoes on state shoreline areas.** Hawaiian outrigger canoe clubs registered with the Hawaiian Canoe Racing Association, Hui Wa‘a Association, its affiliates, or its successor organization may keep their Hawaiian outrigger canoes at no charge on state shoreline areas; provided that:

- (1) The club shall indemnify, hold harmless, and defend the State, its officers, agents, and employees from and against any and all claims arising out of or resulting from activities carried out or undertaken under this section, and shall procure sufficient insurance to provide this indemnification if requested by the department;
- (2) The club shall coordinate the placement of canoes with the applicable state or county authority to appropriately accommodate all beach users; and
- (3) Where required, the club shall secure an annual revocable permit from the applicable state or county agency.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

## ACT 221

SECTION 4. This Act shall take effect upon its approval.

(Became law on July 12, 2005, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 221

H.B. NO. 1614

A Bill for an Act Relating to Civil Service Personnel.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to ensure that the civil service benefits of department of education civil service employees are the same as those provided to civil service employees of other executive branch agencies pursuant to chapter 76, Hawaii Revised Statutes.

SECTION 2. Chapter 76, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§76- Civil service benefits for civil service employees of the department of education.** Personnel not exempt from civil service under either a department of education civil service system or an executive branch civil service system, as of July 1, 2005, and thereafter, shall have the same benefits and rights relating to transfer, reduction in force, promotion, medical placement, and seniority as if they were within the same jurisdiction. Pay adjustments and other adjustments necessary to effectuate the movement of personnel between the two jurisdictions, if not otherwise covered through collective bargaining, shall be subject to rules, policies, and procedures established by each respective director.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval and shall be repealed on June 30, 2009.

(Became law on July 12, 2005, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 222

H.B. NO. 1235

A Bill for an Act Relating to Travel Allowances.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 24-2, Hawaii Revised Statutes, is amended to read as follows:

**“§24-2 Allowance for non-Oahu legislator during session.** A member of the legislature whose legal residence is on an island other than Oahu shall receive an

additional allowance to cover all personal expenses such as board, lodging, and incidental expenses but not travel expenses. ~~[The allowance shall be equal to the maximum allowance for such expenses payable to any public officer or employee for interisland travel and shall be]~~ The allowance under this section shall be set at a single rate that will:

- (1) Not exceed the greater of the maximum allowance for such expenses payable to any public officer or employee of the federal government or the State;
- (2) Be reasonably calculated to cover the expenses specified in this section;  
and
- (3) Be determined jointly by the president of the senate and the speaker of the house of representatives for the legislature as a whole.

The allowance shall be paid to each member at the rate prescribed for each day, from the first to the last day of each session, including Saturdays, Sundays, holidays, and days of recess pursuant to the mandatory recess required by [Article] article<sup>1</sup> III, section 10, of the Constitution or a concurrent resolution, except for days of recess when a session of the legislature is recessed for more than three days pursuant to a concurrent resolution and for days of unexcused absence of the member from a meeting of the respective house.”

SECTION 2. Section 24-3, Hawaii Revised Statutes, is amended to read as follows:

**“§24-3 Allowance for expenses while traveling on official legislative business during a session within the [State] state.** A member of the legislature whose legal residence is on the island of Oahu and who is required to remain away from the island of the member’s legal residence but within the [State] state overnight or longer while on official legislative business during a session and when authorized by the presiding officer of the respective house, shall receive an allowance to cover all personal expenses such as board, lodging, and incidental expenses but not travel expenses. ~~[Such allowance shall be equal to the maximum allowance for such expenses payable to any public officer or employee.]~~ The allowance under this section shall be set at a single rate that will:

- (1) Not exceed the greater of the maximum allowance for such expenses payable to any public officer or employee of the federal government or the State;
- (2) Be reasonably calculated to cover the expenses specified in this section;  
and
- (3) Be determined jointly by the president of the senate and the speaker of the house of representatives for the legislature as a whole.”

SECTION 3. Section 24-4, Hawaii Revised Statutes, is amended to read as follows:

**“§24-4 Allowance for expenses while on official legislative business during period of recess and interim official legislative business.** When a session of the legislature is recessed for more than three days pursuant to a concurrent resolution or for any interim official legislative business, a member of the legislature while on official legislative business on the island of the member’s legal residence and when authorized by the presiding officer of the respective house, shall receive an allowance of \$10 a day to cover personal expenses.

When a session of the legislature is recessed for more than three days pursuant to the mandatory recess required by [Article] article III, section 10, of the

## ACT 222

Constitution or a concurrent resolution or for any interim official legislative business, a member of the legislature who is required to remain away from the island of the member's legal residence but within the [State] state overnight or longer while on official legislative business and when authorized by the presiding officer of the respective house, shall receive an allowance to cover all personal expenses such as board, lodging, and incidental expenses but not travel expenses. [~~Such allowance shall be equal to the maximum allowance for such expenses payable to any public officer or employee.~~] The allowance under this section shall be set at a single rate that will:

- (1) Not exceed the greater of the maximum allowance for such expenses payable to any public officer or employee of the federal government or the State;
- (2) Be reasonably calculated to cover the expenses specified in this section;  
and
- (3) Be determined jointly by the president of the senate and the speaker of the house of representatives for the legislature as a whole."

SECTION 4. Section 24-5, Hawaii Revised Statutes, is amended to read as follows:

**“§24-5 Allowance for expenses while traveling on official legislative business without the [State] state.** A member of the legislature while traveling without the [State] state on official legislative business and when authorized by the presiding officer of the respective house, shall receive an allowance to cover all personal expenses, such as board, lodging, and incidental expenses but not travel expenses. [~~Such allowance shall be equal to the maximum allowance for such expenses payable to any public officer or employee and shall be~~] The allowance under this section shall be set at a single rate that will:

- (1) Not exceed the greater of the maximum allowance for such expenses payable to any public officer or employee of the federal government or the State;
- (2) Be reasonably calculated to cover the expenses specified in this section;  
and
- (3) Be determined jointly by the president of the senate and the speaker of the house of representatives for the legislature as a whole.

The allowance shall be in addition to the allowance [which] that the member may be entitled to receive under section 24-2."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on January 18, 2006.

(Became law on July 12, 2005, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

### Note

1. Should be underscored.



## ACT 223

H.B. NO. 1304

A Bill for an Act Relating to Health.

*Be It Enacted by the Legislature of the State of Hawaii:*

## PART I

SECTION 1. (a) There is established a temporary health care task force to develop a plan to implement health care for all Hawaii residents. The task force shall use the work of the Hawaii Uninsured Project, the Vision 2000 Healthcare Congress, and the Governor's Blue Ribbon Panel on Cancer Care in Hawaii, among others, as a starting point for the development of the plan. The task force shall be placed within the insurance division of the department of commerce and consumer affairs for administrative purposes and shall cease to operate after June 30, 2006.

(b) The task force shall consist of thirteen members to be appointed by the governor, without regard to section 26-34, Hawaii Revised Statutes, from recommendations submitted by the senate president, the speaker of the house of representatives, and the insurance commissioner. All appointments shall be made before July 15, 2005.

The membership shall be comprised of a minimum of seven members chosen from a list submitted by the senate president and the speaker of the house of representatives to ensure a balanced representation of interested parties with a majority of the members having experience in health care and the health care industry, a minimum of five members from private sector organizations, a minimum of three members who actively participate with the Hawaii Uninsured Project, at least one public union representative, and at least one neighbor island representative. The task force shall select a chairperson from among its members. The number of members necessary to constitute a quorum to do business shall consist of a majority of all members of the task force. When a quorum is in attendance, the concurrence of a majority of the members in attendance shall make any action of the task force valid.

(c) The task force shall:

- (1) Develop a plan for implementing health care for all residents of Hawaii; and
- (2) Contract with the Hawaii Uninsured Project to serve as facilitator. As facilitator, the Hawaii Uninsured Project's role will be to:
  - (A) Facilitate convening meetings;
  - (B) Provide minutes for meetings and other staff support;
  - (C) Facilitate contracting for expert testimony or studies, or both, including but not limited to a cost analysis comparing the costs under the status quo with various options under consideration, including but not limited to a possible single-payer system and the recommendations to decrease the uninsured population made by the Hawaii Uninsured Project; and
- (3) Report its findings and recommendations, including recommended legislation, to the legislature no later than twenty days prior to the regular session of 2006. Recommendations shall contain a cost analysis and a detailed rationale for implementation.

(d) The task force may request assistance from the department of health, the insurance division of the department of commerce and consumer affairs, the department of human services, and other appropriate state agencies in fulfilling the purpose of the task force. The task force may also request assistance from the public and others in the health care field.

(e) The members shall not receive compensation for their services but shall be reimbursed for expenses, including travel expenses, incurred in the performance of their duties under this part.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2005-2006 for the task force to carry out the purposes of this part, including contracting for services and studies as necessary.

The sum appropriated shall be expended by the insurance division of the department of commerce and consumer affairs for the purposes of this part.

## PART II

SECTION 3. The current benefit and compensation rate for non-civil service marriage license agents, who are appointed by the department of health, is \$9 per license. This rate has not changed since 1998. The legislature finds that the current benefit and compensation is insufficient to meet the operating costs of an agent.

The legislature further finds that the benefit and compensation for a non-civil service agent should be increased by establishing a surcharge in addition to the marriage license fee currently prescribed to compensate the agents for their work.

SECTION 4. Section 572-5, Hawaii Revised Statutes, is amended to read as follows:

**“§572-5 Marriage license; agent to grant; fee.** (a) The department of health shall appoint, and at its pleasure remove, one or more suitable persons as agents authorized to grant marriage licenses under this chapter in each judicial circuit. The agents may issue licenses from any state facility when deemed necessary by the director. Any agent appointed under this subsection and receiving an application for a marriage license shall collect from the applicant for the license \$60, of which the agent, except those provided for in subsection (b), shall retain \$9 for the agent’s benefit and compensation and shall remit \$51 to the director of health. Upon the receipt of remittances under this subsection, the director of health shall deposit:

- (1) \$32 for each license issued to the credit of the general fund of the State;
- (2) \$4.50 for each license issued to the credit of the spouse and child abuse special account established under section 346-7.5;
- (3) \$4.50 for each license issued to the credit of the spouse and child abuse special account established under section 601-3.6; and
- (4) \$10 for each license issued to the credit of the [{}birth defects special fund{}] established under section 321-426.

(b) The department may appoint, as regular employees under the civil service and classification laws, the number of suitable persons as agents authorized to grant marriage licenses for whom provision has been made in the general appropriation act. In the case of these agents, the full amount collected from applicants shall be remitted to the director of health. Upon the receipt of remittances under this subsection, the director of health shall deposit:

- (1) \$41 for each license issued to the credit of the general fund of the State;
- (2) \$4.50 for each license issued to the credit of the spouse and child abuse special account established under section 346-7.5;
- (3) \$4.50 for each license issued to the credit of the spouse and child abuse special account established under section 601-3.6; and
- (4) \$10 for each license issued to the credit of the [{}birth defects special fund{}] established under [{}section{}] 321-426.

(c) Every agent appointed under this section may administer the oaths required by this chapter to be taken.

(d) The department or its authorized agents shall furnish to each applicant for a marriage license a brochure explaining rubella, the risks of infection with rubella during pregnancy, and how to seek testing and immunization. The department or its authorized agents shall also furnish to each applicant for a marriage license information, to be provided by the department, relating to population stabilization, family planning, birth control, fetal alcohol and drug syndromes, and acquired immune deficiency syndrome (AIDS), including the availability of anonymous testing for [HIV] human immunodeficiency virus (HIV) infection at alternate test sites; provided that such information is available.

(e) In addition to the fee prescribed under subsection (a), the agent, except those provided for in subsection (b), shall collect from the applicant for the license a surcharge of \$5, of which the agent shall retain the full amount for the agent's additional benefit and compensation."

### PART III

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval, except that section 2 shall take effect on July 1, 2005.

(Became law on July 12, 2005, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 224

H.B. NO. 895

A Bill for an Act Relating to Coastal Light Pollution.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that light pollution in Hawaii's coastal areas and artificial lighting illuminating the shoreline and ocean waters can be disruptive to avian and marine life. Light pollution in these areas has been documented as causing the death of hatching sea turtles, fledgling shearwaters, nocturnal flying sea birds, and migratory birds. Laboratory studies have shown that artificial lights can also harm corals that naturally spawn during a full moon by inducing them to spawn artificially during the dark phase of the moon cycle. In addition, there are reports by fishers that artificial illumination affects the behavior of fish.

The purpose of this Act is to mitigate the adverse impacts of light pollution in coastal areas and artificial lights on the shoreline and ocean waters by prohibiting the positioning of artificial lights in a manner causing direct illumination of the shoreline and ocean waters.

SECTION 2. Chapter 205A, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**"§205A- Artificial light on shoreline and ocean waters.** (a) Artificial light from floodlights, uplights, or spotlights used for decorative or aesthetic purposes is prohibited when the light:

(1) Directly illuminates the shoreline and ocean waters; or

- (2) Is directed to travel across property boundaries toward the shoreline and ocean waters.
- (b) Subsection (a) shall not apply to:
  - (1) An outdoor lighting fixture that is located on the grounds of a hotel/ hotel-condo as defined in section 486K-1; provided that:
    - (A) The outdoor lighting fixture is located underwater or is directed downward and illuminates a limited area of no more than thirty feet into the shoreline and ocean waters; or
    - (B) The outdoor lighting fixture is the only practicable means of ensuring the safety and security of guests, visitors, and employees; and
  - (2) Artificial lighting provided by a government agency or its authorized users for government operations, security, public safety, or navigational needs; provided that a government agency or its authorized users shall make reasonable efforts to properly position or shield lights to minimize adverse impacts.
- (c) The authority shall adopt rules under chapter 91 setting forth procedures for implementing this section.

**§205A- Prohibitions.** (a) No special management area use permit or special management area minor permit shall be granted for structures that allow artificial light from floodlights, uplights, or spotlights used for decorative or aesthetic purposes when the light:

- (1) Directly illuminates the shoreline and ocean waters; or
- (2) Is directed to travel across property boundaries toward the shoreline and ocean waters.
- (b) Subsection (a) shall not apply to special management area use permits for structures with:
  - (1) An outdoor lighting fixture that is located on the grounds of a hotel/ hotel-condo as defined in section 486K-1; provided that:
    - (A) The outdoor lighting fixture is located underwater or is directed downward and illuminates a limited area of no more than thirty feet into the shoreline and ocean waters; or
    - (B) The outdoor lighting fixture is the only practicable means of ensuring the safety and security of guests, visitors, and employees; and
  - (2) Artificial lighting provided by a government agency or its authorized users for government operations, security, public safety, or navigational needs; provided that a government agency or its authorized users shall make reasonable efforts to properly position or shield lights to minimize adverse impacts.
- (c) The authority shall adopt rules under chapter 91 setting forth procedures for implementing this section.”

SECTION 3. Section 205A-1, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

“‘Artificial light’ or ‘artificial lighting’ means the light emanating from any fixed human-made device.

“‘Directly illuminate’ means to illuminate through the use of a glowing element, lamp, globe, or reflector of an artificial light source.

“‘Ocean waters’ means all waters seaward of the shoreline within the jurisdiction of the State.”

SECTION 4. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect upon its approval.

(Became law on July 12, 2005, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 225**

H.B. NO. 1528

A Bill for an Act Relating to Public Employees.

*Be It Enacted by the Legislature of the State of Hawaii:*

**PART I**

SECTION 1. Section 23-3, Hawaii Revised Statutes, is amended to read as follows:

**“§23-3 Salary of the auditor and appropriations.** The salary of the auditor shall be fixed by the legislature and shall not be diminished during the auditor's term of office. Effective [~~January 1, 1989, and January 1, 1990,~~] July 1, 2005, the salary of the auditor shall be [~~\$81,629 and \$85,302 a year, respectively.~~] the same as the salary of the director of health.

The funds for the support of the auditor's office shall be provided for in the act providing for the expenses of the legislature.”

SECTION 2. Section 23-8, Hawaii Revised Statutes, is amended to read as follows:

**“§23-8 Assistance and staff.** In the performance of the auditor's duties, the auditor may employ the services of one or more certified public accountants or accounting firms, and [~~such~~] other assistants and clerical workers as may be necessary[;]; provided the cost thereof shall not exceed [~~such~~] the sums as may be available out of the appropriation provided by law for the conduct of the auditor's office [~~and~~]; provided further that [~~such~~] the accountants, firms, and assistants are entirely independent of the departments, offices, and agencies of the State and its political subdivisions whose affairs are subject to audit by the auditor.

All employees shall be hired by the auditor subject to the approval of the president of the senate and the speaker of the house of representatives and shall serve at the auditor's pleasure; provided that in the establishment of the salary of each employee, the auditor shall consult with the department of human resources development and shall follow as closely as possible the recommendations of the department; [~~and~~]; provided further that effective [~~January 1, 1989, and January 1, 1990,~~] July 1, 2005, the salary of the first assistant or first deputy shall be [~~\$69,748 and \$72,886 a year, respectively.~~] not more than eighty-seven per cent of the salary of the auditor. The auditor and the auditor's full-time staff shall be entitled to participate in any employee benefit program privileges.”

SECTION 3. Section 23G-1, Hawaii Revised Statutes, is amended to read as follows:

**“§23G-1 Legislative reference bureau; director, appointment, tenure, removal, compensation, vacancy.** The office of the legislative reference bureau is established. The legislature, by a majority vote of each house in joint session, shall appoint a director for the bureau who shall serve for a period of six years and thereafter until a successor shall have been appointed. The legislature, by two-thirds vote of the members in joint session, may remove or suspend the director from office, but only for neglect of duty, misconduct, or disability.

If the director dies, resigns, becomes ineligible to serve, or is removed or suspended from office, the first assistant to the director shall become the acting director until a new director is appointed.

Effective [~~January 1, 1989, and January 1, 1990,~~] July 1, 2005, the salary of the director shall be [~~\$81,629 and \$85,302 a year, respectively,~~] the same as the salary of the director of health. The salary of the director shall not be diminished during the director’s term of office, unless by general law applying to all salaried officers of the State.”

SECTION 4. Section 23G-2, Hawaii Revised Statutes, is amended to read as follows:

**“§23G-2 Assistant; staff.** The director shall appoint a first assistant and [~~such~~] other officers and employees as may be necessary to carry out the functions of the bureau. All employees, including the first assistant, shall be hired by the director and shall serve at the director’s pleasure. In determining the salary of the employees of the bureau, the director shall consult with the department of human resources development; provided that, effective [~~January 1, 1989, and January 1, 1990,~~] July 1, 2005, the salary of the first assistant shall be [~~\$69,748 and \$72,886 a year, respectively,~~] not more than eighty-seven per cent of the salary of the director. The director and the director’s full-time staff shall be entitled to participate in any employee benefit program plan or privilege.”

SECTION 5. Section 84-35, Hawaii Revised Statutes, is amended to read as follows:

**“§84-35 Staff.** The ethics commission may employ and at pleasure remove such persons, including an executive director, as it may deem necessary for the performance of its functions. [~~The salary of the executive director shall not exceed that of a deputy under section 26-53.~~] Effective July 1, 2005, the salary of the executive director shall be the same as the salary of the director of health. The commission shall fix the compensations of its employees within the amounts made available by appropriation therefor. The employees of the commission shall be exempt from chapter 76.”

SECTION 6. Section 96-2, Hawaii Revised Statutes, is amended to read as follows:

**“§96-2 Ombudsman; office established, appointment, tenure, removal, qualifications, salary, vacancy.** The office of ombudsman is established. The legislature, by a majority vote of each house in joint session, shall appoint an ombudsman who shall serve for a period of six years and thereafter until a successor shall have been appointed. An ombudsman may be reappointed but may not serve for more than three terms. The legislature, by two-thirds vote of the members in joint session, may remove or suspend the ombudsman from office, but only for neglect of duty, misconduct, or disability.

No person may serve as ombudsman within two years of the last day on which the person served as a member of the legislature, or while the person is a candidate for or holds any other state office, or while the person is engaged in any other occupation for reward or profit. Effective [~~January 1, 1989, and January 1, 1990,~~] July 1, 2005, the salary of the ombudsman shall be [~~\$81,629 and \$85,302 a year, respectively.~~] the same as the salary of the director of health. The salary of the ombudsman shall not be diminished during the ombudsman's term of office, unless by general law applying to all salaried officers of the State.

If the ombudsman dies, resigns, becomes ineligible to serve, or is removed or suspended from office, the first assistant to the ombudsman becomes the acting ombudsman until a new ombudsman is appointed for a full term."

SECTION 7. Section 96-3, Hawaii Revised Statutes, is amended to read as follows:

**“§96-3 Assistance, staff, delegation, funding.** The ombudsman shall appoint a first assistant and [~~sueh~~] other officers and employees as may be necessary to carry out this chapter. All employees, including the first assistant, shall be hired by the ombudsman and shall serve at the ombudsman's pleasure. In determining the salary of each [~~sueh~~] employee, the ombudsman shall consult with the department of human resources development and shall follow as closely as possible the recommendations of the department. Effective [~~January 1, 1989, and January 1, 1990,~~] July 1, 2005, the first assistant's salary shall be [~~\$69,748 and \$72,886 a year, respectively.~~] not more than eighty-seven per cent of the salary of the ombudsman. The ombudsman and the ombudsman's full-time staff shall be entitled to participate in any employee benefit plan.

The ombudsman may delegate to the ombudsman's appointees any of the ombudsman's duties except those specified in sections 96-12 and 96-13; provided that during the absence of the ombudsman from the island of Oahu, or the ombudsman's temporary inability to exercise and discharge the powers and duties of the ombudsman's office, [~~sueh~~] the powers and duties as contained in sections 96-12 and 96-13 shall devolve upon the first assistant during [~~sueh~~] the ombudsman's absence or inability.

The funds for the support of the office of the ombudsman shall be provided for in the act providing for the expenses of the legislature.”

PART II

SECTION 8. There are appropriated out of the general revenues of the State of Hawaii to the legislative agencies indicated below the following sums or so much thereof as may be necessary for fiscal year 2005-2006 to fund the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for officers and employees of these agencies excluded from collective bargaining:

|  | <u>FY 2005-2006</u> |
|--|---------------------|
| State ethics commission                    | \$25,087            |
| Office of the auditor                      | \$61,035            |
| Office of the legislative reference bureau | \$74,749            |
| Office of the ombudsman                    | \$25,802.           |

The sums appropriated shall be expended by the respective heads of the legislative agencies for the purposes of this Act.

SECTION 9. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid in whole or in part from

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federal, special, or other funds shall be paid wholly or proportionally, as the case may be, from the respective funds.

SECTION 10. Funds appropriated or authorized by this Act that are not expended or encumbered by the last day of the fiscal year for which they were appropriated or authorized shall lapse as of that date.

### PART III

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 12. This Act shall take effect on July 1, 2005.

(Became law on July 12, 2005, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 226

S.B. NO. 807

A Bill for an Act Relating to Salaries.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act addresses the salaries of various department heads and the deputy positions that are set by statute. These salaries are tied in with the compensation established by the executive salary commission pursuant to section 26-55, Hawaii Revised Statutes. In the past, these positions were paid at the same level as the department head or deputy department heads that were all paid at the same salary level, as specified by statute. However, in 2004, the executive salary commission determined that department head and deputy positions should be paid at different ranges, as determined by several factors, including the marketplace, level of responsibility, number of employees supervised, and amount of operating budget. Accordingly, it is necessary to revise the statutes controlling the salaries of certain positions and tie these salaries to the different tiers established by the executive salary commission.

SECTION 2. Section 11-1.6, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The chief election officer shall be paid a salary [~~set at the maximum salary payable to deputies or assistants to department heads as established by section 26-53.~~] not to exceed eighty-seven per cent of the salary of the director of human resources development.”

SECTION 3. Section 89-5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The members shall devote full time to their duties as members of the board. [~~Effective January 1, 1989, and January 1, 1990, the salary of the chairperson of the board shall be set by the governor within the range from \$69,748 to \$74,608 and \$72,886 to \$77,966 a year, respectively.~~] Effective July 1, 2005, the chairperson of the board shall be paid a salary set at eighty-seven per cent of the salary of the director of labor and industrial relations, and the salary of each of the other members shall be ninety-five per cent of the chairperson's salary. No member shall hold any other public office or be in the employment of the State or a county, or any department or agency thereof, or any employee organization during the member's term.”



SECTION 4. Section 103D-204, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be a state procurement office, placed for administrative purposes only, within the department of accounting and general services, which shall be headed by the administrator of the state procurement office. The administrator shall be the chief procurement officer for those governmental bodies of the executive branch as provided in section ~~[[103D-203(a)(7)]]~~. The administrator shall be a full-time public official. The administrator shall serve a term of four years, and shall be paid ~~[the] a salary [established for deputies or assistants to department heads under section 26-53]~~ not to exceed eighty-seven per cent of the salary of the director of human resources development, without diminution during the administrator’s term of office unless by general law applying to all deputies or assistants to department heads.”

SECTION 5. Section 109-2, Hawaii Revised Statutes, is amended to read as follows:

“**§109-2 Stadium authority; powers and duties.** The powers and duties of the stadium authority shall be as follows:

- (1) To maintain, operate, and manage the stadium and related facilities, and to provide for the maintenance, operation, management, and promotion of the Kapolei recreational sports complex;
- (2) To prescribe and collect rents, fees, and charges for the use or enjoyment of the stadium or any of its facilities;
- (3) To make and execute contracts and other instruments necessary or convenient to exercise its powers under this chapter and subject to any limitations in this chapter, to exercise all powers necessary, incidental, or convenient to carry out and effectuate the purposes and provisions of this chapter, including entering into contracts under chapter 102 or 103D for the management of the Kapolei recreational sports complex, to include but not be limited to the operation, maintenance, and promotion of the complex in a manner that is beneficial to both the State and the contractor. These contracts may contain revenue sharing incentives based on increased usage of the complex;
- (4) To adopt, amend, and repeal in accordance with chapter 91 rules it may deem necessary to effectuate this chapter and in connection with its projects, operations, and facilities;
- (5) To appoint a manager and a deputy manager who shall have such qualifications as the authority deems necessary and who shall hold their respective offices at the pleasure of the authority. The manager and deputy manager shall be exempt from the requirements of chapters 76 and 89. ~~[Effective January 1, 1989, and January 1, 1990, the salary of the manager shall be set by the governor within the range from \$69,748 to \$74,608 and \$72,886 to \$77,966 a year, respectively. Effective January 1, 1989, and January 1, 1990, the salary of the deputy manager shall be \$62,854 and \$65,683 a year, respectively.]~~ Effective July 1, 2005, the manager shall be paid a salary not to exceed eighty-seven per cent of the salary of the director of human resources development. Effective July 1, 2005, the deputy manager shall be paid a salary not to exceed eighty-five per cent of the manager’s salary. The manager shall have full power to administer the affairs of the stadium and related facilities, and to provide for a management contract for the Kapolei recreational sports complex, subject to the direction and approval of the

authority. The manager shall, subject to the approval of the authority, have power to appoint, suspend, and discharge a secretary who shall be exempt from the requirements of chapters 76 and 89, and such other employees, subordinates, and assistants as may be necessary for the proper conduct of the business of the authority. Except for persons hired on contract or otherwise as provided in section 109-3 and except for the manager, deputy manager, and secretary, all appointments, suspensions, or discharges shall be made in conformity with the applicable provisions of chapter 76; and

- (6) To plan, promote, and market the stadium, its related facilities, and the Kapolei recreational sports complex.”

SECTION 6. Section 128-3, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) There shall be a vice-director of civil defense who shall be appointed and may be removed by the director. The vice-director shall be the first assistant to the director and shall, in the absence of the director, have all the duties and responsibilities of the director. The vice-director shall ~~[receive such compensation as shall be provided pursuant to section 26-53.]~~ be paid a salary not to exceed eighty-seven per cent of the salary of the director of human resources development. Chapter 76 shall not apply to the vice-director.”

SECTION 7. Section 269-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) ~~[Effective January 1, 1989, and January 1, 1990, the chairperson of the commission shall be paid a salary set by the governor within the range of \$69,748 to \$74,608 and \$72,886 to \$77,966 a year, respectively.]~~ Effective July 1, 2005, the chairperson of the commission shall be paid a salary set at eighty-seven per cent of the salary of the director of human resources development, and each of the other commissioners shall be paid a salary equal to ninety-five per cent of the chairperson’s salary. The commissioners shall be exempt from chapters 76 and 89 but shall be members of the state employees retirement system and shall be eligible to receive the benefits of any state or federal employee benefit program generally applicable to officers and employees of the State, including those under chapter 87.

The commission is placed within the department of budget and finance for administrative purposes.”

SECTION 8. Section 342G-12.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§342G-12.5** **Recycling coordinator.** There is established a position of assistant to the coordinator of the office of solid waste management to be known as the recycling coordinator. The position shall be appointed by the director without regard to chapter 76 ~~[and shall be compensated at an annual salary level of \$42,538].~~ Effective July 1, 2005, the recycling coordinator shall be paid a salary set by the appointing authority that shall not exceed fifty per cent of the salary of the director of human resources development. The recycling coordinator shall be included in any benefit program generally applicable to the officers and employees of the State.”

SECTION 9. Section 349-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The head of this office shall be known as the director of the executive office on aging, hereinafter referred to as director. The director shall have professional training in the field of social work, education, public health, and other related fields; extensive direct experience in programs or services related to elders; and recent experience in a supervisory, consultative, or administrative position. The director shall be nominated and appointed by the governor without regard to chapters 76 and 89. ~~[Effective January 1, 1989, and January 1, 1990, the salary of the director shall be \$56,505 and \$59,048 a year, respectively.]~~ Effective July 1, 2005, the director shall be paid a salary set by the appointing authority that shall not exceed sixty-nine per cent of the salary of the director of human resources development. The director shall be included in any benefit program generally applicable to the officers and employees of the State.”

SECTION 10. Section 353-63, Hawaii Revised Statutes, is amended to read as follows:

“**§353-63 Service of Hawaii paroling authority members; compensation; expenses.** The chairperson of the Hawaii paroling authority shall serve on a full-time basis. The other two members shall serve on a part-time basis. ~~[Effective July 1, 1994, the chairperson of the Hawaii paroling authority shall be paid a salary set by the governor within the range of \$72,886 to \$77,966, a year.]~~ Effective July 1, 2005, the chairperson of the Hawaii paroling authority shall be paid a salary set at eighty-seven per cent of the salary of the director of public safety. The compensation of each of the part-time members shall be eighty per cent of the hourly wage paid the chairperson. For each hour engaged in the official duties of the authority, each part-time member of the authority shall be paid an hourly wage at the percentage rate specified in this section based on the hourly wage paid the chairperson; provided that compensation shall not exceed eighty per cent of the total regular working hours in a month; ~~and~~ provided further that part-time members shall not be entitled to any vacation, sick leave, or other benefits except as provided in this section. All paroling authority members shall receive their necessary expenses for travel and incidentals which shall be paid from appropriations provided the authority for such purposes, on vouchers approved by the director of public safety.”

SECTION 11. Section 363-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The head of the office shall be known as the director of the office of veterans’ services. The director shall be nominated and appointed by the governor without regard to chapters 76 and 89. ~~[Effective July 1, 1990, the salary of the director shall be \$59,048 a year.]~~ Effective July 1, 2005, the director shall be paid a salary set by the appointing authority that shall not exceed sixty-nine per cent of the salary of the director of human resources development. The director shall be included in any benefit program generally applicable to the officers and employees of the State.”

SECTION 12. Section 371-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is created a labor and industrial relations appeals board composed of three members nominated and, by and with the advice and consent of the senate, appointed by the governor for terms of ten years each, except that the terms of members first appointed shall be for six, eight, and ten years respectively as designated by the governor at the time of appointments. The governor shall designate the chairperson of the board, who shall be an attorney at law licensed to practice

in all of the courts of this State. Each member shall hold office until the member's successor is appointed and qualified. Because cumulative experience and continuity in office are essential to the proper handling of appeals under workers' compensation law and other labor laws, it is hereby declared to be in the public interest to continue board members in office as long as efficiency is demonstrated. The members shall devote full time to their duties as members of the board. ~~[Effective January 1, 1989, and January 1, 1990, the salary of the chairperson of the board shall be set by the governor within the range from \$69,748 to \$74,608 and \$72,886 to \$77,966 a year, respectively.]~~ Effective July 1, 2005, the chairperson of the board shall be paid a salary set at eighty-seven per cent of the salary of the director of labor and industrial relations, and the salary of each of the other members shall be ninety-five per cent of the chairperson's salary."

SECTION 13. Section 412:2-100, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The salary of the commissioner shall be set by the director of commerce and consumer affairs but shall not be more than the maximum salary of first ~~[deputies] deputy to the [department heads.]~~ director of commerce and consumer affairs."

SECTION 14. Section 802-11, Hawaii Revised Statutes, is amended to read as follows:

"**§802-11 Appointment of state public defender.** The state public defender shall be appointed by the defender council without regard to chapters 76 and 89. The state public defender's appointment shall be for a term of four years except as otherwise provided herein, and until the state public defender's successor is appointed and qualified. The state public defender shall be qualified to practice law before the supreme court of this State. ~~[Effective January 1, 1989, and January 1, 1990, the salary of the state public defender shall be set by the governor within the range from \$69,748 to \$74,608 and \$72,886 to \$77,966 a year, respectively.]~~ Effective July 1, 2005, the state public defender shall be paid a salary set at eighty-seven per cent of the attorney general. The state public defender shall devote full time to the performance of the state public defender's duties and shall not engage in the general practice of law."

SECTION 15. There is appropriated out of the general revenues of the State of Hawaii the sum of \$7,883, or so much thereof as may be necessary for fiscal year 2005-2006, and the sum of \$8,041, or so much thereof as may be necessary for fiscal year 2006-2007, for the purpose of funding the salary increases established under sections 2, 4, and 5 of this Act.

The sum appropriated shall be expended by the department of accounting and general services for the purposes of this Act.

SECTION 16. There is appropriated out of the general revenues of the State of Hawaii the sum of \$12,674, or so much thereof as may be necessary for fiscal year 2005-2006, and the sum of \$12,927, or so much thereof as may be necessary for fiscal year 2006-2007, for the purpose of funding the salary increases established under sections 3 and 12 of this Act.

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this Act.

SECTION 17. There is appropriated out of the general revenues of the State of Hawaii the sum of \$6,194, or so much thereof as may be necessary for fiscal year 2005-2006, and the sum of \$6,318, or so much thereof as may be necessary for fiscal year 2006-2007, for the purpose of funding the salary increases established under sections 6 and 11 of this Act.

The sum appropriated shall be expended by the department of defense for the purposes of this Act.

SECTION 18. There is appropriated out of the general revenues of the State of Hawaii the sum of \$7,656, or so much thereof as may be necessary for fiscal year 2005-2006, and the sum of \$7,809, or so much thereof as may be necessary for fiscal year 2006-2007, for the purpose of funding the salary increases established under sections 8 and 9 of this Act.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 19. There is appropriated out of the general revenues of the State of Hawaii the sum of \$17,111, or so much thereof as may be necessary for fiscal year 2005-2006, and the sum of \$17,453, or so much thereof as may be necessary for fiscal year 2006-2007, for the purpose of funding the salary increases established under sections 7 and 14 of this Act.

The sum appropriated shall be expended by the department of budget and finance for the purposes of this Act.

SECTION 20. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,900, or so much thereof as may be necessary for fiscal year 2005-2006, and the sum of \$1,938, or so much thereof as may be necessary for fiscal year 2006-2007, for the purpose of funding the salary increase established under section 10 of this Act.

The sum appropriated shall be expended by the department of public safety for the purposes of this Act.

SECTION 21. There is appropriated out of the compliance resolution fund established under section 26-9, Hawaii Revised Statutes, the sum of \$19,185, or so much thereof as may be necessary for fiscal year 2005-2006, and the sum of \$19,569, or so much thereof as may be necessary for fiscal year 2006-2007, for the purpose of funding the salary increase established under section 13 of this Act.

The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

SECTION 22. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 23. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 24. This Act shall take effect on July 1, 2005.

(Became law on July 12, 2005, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

A Bill for an Act Relating to Solid Waste Control.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that redemption centers require universal product code information to process redemptions for empty containers at reverse vending machines. The purpose of this Act is to require the department of health to facilitate the exchange of information between beverage container manufacturers, distributors, and retailers and certified redemption centers that operate reverse vending machines to facilitate the input of the universal product code, thus enabling a reverse vending machine to accept an empty container for redemption.

SECTION 2. Section 342G-114, Hawaii Revised Statutes, is amended to read as follows:

“**§342G-114 Redemption centers.** (a) Prior to operation, redemption centers shall be certified by the department.

(b) Applications for certification as a redemption center shall be filed with the department [~~of health~~] on forms prescribed by the department.

(c) The [State] department, at any time, may review the certification of a redemption center. After written notice to the person responsible for the establishment and operation of the redemption center and to the dealers served by the redemption center, the [State] department, after it has afforded the redemption center operator a hearing in accordance with chapter 91, may withdraw the certification of the center if it finds that there has not been compliance with applicable laws, rules, permit conditions, or certification requirements.

(d) Redemption centers shall:

- (1) Accept all types of empty deposit beverage containers for which a deposit has been paid;
- (2) Verify that all containers to be redeemed bear a valid Hawaii refund value;
- (3) Pay to the redeemer the full refund value in either cash or a redeemable voucher for all deposit beverage containers, except as provided in section 342G-116;
- (4) Ensure each deposit beverage container collected is recycled through a contractual agreement with an out-of-state recycler or an in-state recycling facility permitted by the department; provided that this paragraph shall not apply if the redemption center is operated by a recycler permitted by the department; and
- (5) Forward the documentation necessary to support claims for payment as stated in section 342G-119.

(e) Redemption centers' redemption areas shall be maintained in full compliance with applicable laws and with the orders and rules of the department, including permitting requirements, if deemed necessary, under chapter 342H.

(f) The department shall develop procedures to facilitate the exchange of information between deposit beverage container manufacturers, distributors, and retailers and certified redemption centers, including but not limited to universal product code information for reverse vending machine purposes. The procedures developed by the department shall allow for a reasonable time period between the introduction of a new deposit beverage product and the deadline for submitting universal product code information to certified redemption centers operating reverse vending machines.”

SECTION 3. Section 342G-119, Hawaii Revised Statutes, is amended to read as follows:

**“§342G-119 Redemption center reporting.** The department shall pay certified redemption centers handling fees and refund values as described in section 342G-117, based on collection reports submitted by the redemption centers. All redemption centers shall submit to the department the following information on forms prescribed by the department, which information shall include at a minimum:

- (1) The number or weight of deposit beverage containers of each material type accepted at the redemption center for the reporting period;
- (2) The amount of refunds paid out by material type;
- (3) The number or weight of deposit beverage containers of each material type transported out-of-state or to a permitted recycling facility; and
- (4) Copies of out-of-state transport and weight receipts or acceptance receipts from permitted recycling facilities. If the redemption center and the recycling facility are the same entity, copies of out-of-state transport and weight receipts, or documentation of end use accepted by the department, shall also be included.

The requests for payment shall be no ~~[more]~~ less ~~[frequent]~~ than two times per month.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Became law on July 12, 2005, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 228

S.B. NO. 212

A Bill for an Act Relating to Environment.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. In 2002, the legislature established the deposit beverage container program under Act 176, Session Laws of Hawaii 2002, recognizing that recycling is an important element of the integrated solid waste management system that helps to protect and preserve environmental resources and reduce economic costs to residents and businesses within the State. Since the implementation of the redemption program on January 1, 2005, public participation in the deposit beverage container program has been growing steadily, with the department of health reporting that the redemption rate for the first quarter reached thirty-two per cent. Although above the national average of twenty-seven per cent for non-deposit states, the program is still far below its goal of eighty per cent redemption.

The legislature finds that two of the primary factors contributing to the low participation rate are the inadequate number of redemption centers and a lack of the dealer participation necessary to make recycling convenient for consumers. The legislature also finds that the infrastructure supporting the fifty-six currently certified redemption centers and recyclers is overburdened and stressed in its attempts to handle growth of the deposit beverage container program.

The purpose of this Act is to:

- (1) Require and outline the minimum standards for the department of health to provide a rebate for the cost of a reverse vending machine purchased by a dealer; and
- (2) Authorize the department of health to solicit requests for proposals to increase opportunities for redemption and improve the recycling infrastructure to handle the growth of the deposit beverage container program.

SECTION 2. Chapter 342G, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

**“§342G-A Reverse vending machine rebate program; standards.** (a) The department shall provide a rebate, not to exceed \$3,000,000 in the aggregate in any fiscal year, of the cost of purchasing a reverse vending machine, including shipping and general excise tax, purchased by a dealer:

- (1) That is a certified redemption center and that agrees to maintain operations as a certified redemption center for a minimum period of two years; or
  - (2) That is serviced by a recycler that is a certified redemption center; provided that the dealer has entered into a service agreement with the recycler for a minimum period of two years.
- (b) The rebate provided under this section shall be granted for reverse vending machines that:
- (1) Are installed and operational by December 31, 2005;
  - (2) Are located on the dealer’s premises;
  - (3) Are accessible to the general public; and
  - (4) Tender vouchers or receipts for the returned containers that are redeemable by the dealer at a location on the dealer’s premises that is accessible to the general public.
- (c) Each dealer may receive a rebate of not more than:
- (1) \$30,000 per retail site over five thousand square feet but less than ten thousand square feet;
  - (2) \$60,000 per retail site over ten thousand square feet but less than seventy-five thousand square feet; or
  - (3) \$90,000 per retail site over seventy-five thousand square feet.
- (d) Prior to the purchase of a reverse vending machine, an application for rebate shall be made to the department on forms provided by the department to certify eligibility for a rebate. The application shall contain information determined by the department to be required; provided that at a minimum, the application shall require the applicant to provide the following:
- (1) The applicant’s name;
  - (2) The location where each reverse vending machine will be installed and operated;
  - (3) A projection of the number of customers expected to use each reverse vending machine;
  - (4) The requested rebate amount;
  - (5) Proof of certification of the applicant’s redemption center or, in the case of a dealer that is serviced by a recycler, the executed service agreement between the recycler and dealer; and
  - (6) The projected installation date of each reverse vending machine.
- (e) The dealer or recycler providing the certified redemption service shall comply with all rules of the department. If any dealer or recycler is found by the department to be not in compliance with the department’s rules, the dealer shall



reimburse the department for the full amount of the rebate. The department may institute an action pursuant to chapter 91 to recover any rebate paid under this section if the dealer, or the recycler that has a contract with the dealer to service the reverse vending machine, fails to comply with the requirements of this part or any rule adopted pursuant to it.

(f) Amounts received under this section shall not be treated as income for purposes of chapter 235 or gross proceeds or gross income for purposes of chapter 237.

(g) A reverse vending machine shall not be considered a depreciable asset and no person may claim depreciation therefor, at least to the extent that the reverse vending machine has been purchased with rebate funds.

(h) Any dealer participating in the rebate program shall not be eligible to participate in the redemption center and recycling infrastructure improvement program under section 342G-B.

(i) The director shall include in the deposit beverage container program annual report to the legislature, a report on the reverse vending machine rebate program.

**§342G-B Redemption center and recycling infrastructure improvement program; standards.** (a) Notwithstanding chapter 103D, the department shall develop and implement a redemption center and recycling infrastructure improvement program using a request for proposals to contract with dealers and recyclers to improve redemption and recycling infrastructure statewide; provided that:

- (1) One award only shall be allowed for each person; and
- (2) An award under this program shall not be available to any person to whom a reverse vending machine rebate has been paid under section 342G-A;

provided further that the amount of awards shall not exceed \$3,000,000 in the aggregate in any fiscal year.

(b) The director shall include in the deposit beverage container program annual report to the legislature a report on the redemption center and recycling infrastructure improvement program.

**§342G-C Reporting requirement.** The department shall provide annual reports on the deposit beverage container program to the legislature and the governor, with each report being due no later than twenty days prior to the convening of each regular session. The reports shall contain but not be limited to:

- (1) Performance indicators;
- (2) Measures of effectiveness;
- (3) Organization charts; and
- (4) Position descriptions of every type of position created and actual salaries paid to each employee.

The reports shall include recommended legislation for statutory changes.

If the administration of the deposit beverage container program is contracted to a third party pursuant to section 342G-106, a copy of the contract shall be appended to the next applicable report, and the contractor shall abide by these reporting requirements as well. The contractor's pay scales shall be comparable to equivalent positions in civil service."

SECTION 3. Section 342G-104, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Moneys in the deposit beverage container deposit special fund shall be used to reimburse refund values [and], pay handling fees to redemption centers[-],

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fund the reverse vending machine rebate program under section 342G-A, and fund the redemption center and recycling infrastructure improvement program established pursuant to section 342G-B. The department may also use the money to:

- (1) Fund administrative, audit, and compliance activities associated with collection and payment of the deposits and handling fees of the deposit beverage container program;
- (2) Conduct recycling education and demonstration projects;
- (3) Promote recyclable market development activities;
- (4) Support the handling and transportation of the deposit beverage containers to end-markets;
- (5) Hire personnel to oversee the implementation of the deposit beverage container program, including permitting and enforcement activities; and
- (6) Fund associated office expenses.’’

SECTION 4. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect upon its approval; provided that:

- (1) This Act shall be repealed on June 30, 2006, and section 342G-104, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act; and
- (2) Any action initiated by the department of health pursuant to section 342G-A(e), Hawaii Revised Statutes, shall be allowed to continue until final resolution of the action is achieved.

(Became law on July 12, 2005, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 229

S.B. NO. 962

A Bill for an Act Relating to Prevailing Wages.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 104-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Every laborer and mechanic performing work on the job site for the construction of any public work project shall be paid no less than prevailing wages; provided that:

- (1) The prevailing wages shall be [~~not less than the wages that the director of labor and industrial relations, under the rules, shall have determined to be the prevailing wages for corresponding classes of laborers and mechanics on projects of similar character in the State;~~] established by the director as the sum of the basic hourly rate and the cost to an

employer of providing a laborer or mechanic with fringe benefits. In making prevailing wage determinations, the following shall apply:

- (A) The director shall make separate findings of:
- (i) The basic hourly rate; and
  - (ii) The rate of contribution or cost of fringe benefits paid by the employer when the payment of the fringe benefits by the employer constitutes a prevailing practice. The cost of fringe benefits shall be reflected in the wage rate scheduled as an hourly rate; and
- (B) The rates of wages which the director shall regard as prevailing in each corresponding classification of laborers and mechanics shall be the rate of wages paid to the greatest number of those employed in the State, the modal rate, in the corresponding classes of laborers or mechanics on projects that are similar to the contract work;
- (2) The prevailing wages shall be not less than the wages payable under federal law to corresponding classes of laborers and mechanics employed on public works projects in the State that are prosecuted under contract or agreement with the government of the United States; and
  - (3) Notwithstanding the provisions of the original contract, the prevailing wages shall be periodically adjusted during the performance of the contract in an amount equal to the change in the prevailing wage as periodically determined by the director.’

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Became law on July 12, 2005, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 230

S.B. NO. 1778

A Bill for an Act Relating to Contractors.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 444-10.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[(§)444-10.5]~~ **Citation for unlicensed activity.** (a) In addition to any other remedy available, the investigator may issue citations to persons acting in the capacity of or engaging in the business of a contractor within the State, without having a license previously obtained under and in compliance with this chapter and the rules promulgated thereunder. If the investigator determines that a person is acting in the capacity of, or engaging in the business of, a contractor within this State without having a license to so act or engage, the investigator may issue a citation to such person.

(b) Each citation shall be in writing and shall describe the basis of the citation, including the specific statutory provisions alleged to have been violated, and ~~[may]~~ shall contain an order ~~[of abatement,]~~ to cease and desist from the violation, and an assessment of civil penalties as provided in section 444-23. The

citation shall also include notice of the sanctions for violating the cease and desist order. All penalties collected under this section shall be deposited in the special fund established under section 26-9.

(c) Service of a citation issued under this section shall be made by personal service whenever possible, or by certified mail, restricted delivery, sent to the last known business or residence address of the person cited.

(d) Any person served with a citation under this section may submit a written request to the director for a hearing, within twenty days from the receipt of the citation, with respect to the violations alleged, the scope of the order [~~of abatement~~] to cease and desist, and the amount of the civil penalties assessed.

(e) If the person cited under this section timely notifies the director of the request for a hearing, the director shall afford an opportunity for a hearing under chapter 91. The hearing shall be conducted by the director or the director may designate a hearings officer to hold the hearing. The director or any hearings officer designated by the director shall have the power to issue subpoenas, administer oaths, hear testimony, find facts, and make conclusions of law and issue a final order.

(f) If the person cited under this section does not submit a written request to the director for a hearing within twenty days from the receipt of the citation, the citation shall be deemed a final order of the director.

(g) The director may apply to the appropriate court for a judgment to enforce the provisions of any final order issued by the director or designated hearings officer pursuant to this section, including the provisions [~~for abatement~~] to cease and desist and for civil penalties imposed. In any proceeding to enforce the provisions of the final order of the director or designated hearings officer, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, and a certified copy of the final order of the director or designated hearings officer.

(h) If any party is aggrieved by the decision of the director or the designated hearings officer, the party may appeal in the manner provided in chapter 91 to the circuit court of the circuit in which the party resides or has the party's principal place of business or in which the action in question occurred; provided that the operation of [~~an abatement~~] a cease and desist order [~~will~~] shall not be stayed on appeal unless specifically ordered by a court of competent jurisdiction after applying the stay criteria enumerated in section 91-14(c).

(i) The sanctions and disposition authorized under this section shall be separate from and in addition to all other remedies either civil or criminal provided in any other applicable statutory provision. The director may adopt rules under chapter 91 as may be necessary to fully effectuate this section.

(j) The director may apply to the appropriate court for injunctive or any other relief the court deems appropriate, including a fine of not less than \$10,000 for each offense, against any person who violates a cease and desist order. Each day's violation or failure to comply with a cease and desist order shall be deemed a separate offense. The allegations in the citation shall be deemed conclusively established for purposes of a proceeding for permanent or temporary relief to enforce the cease and desist order.'

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Became law on July 12, 2005, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 231

S.B. NO. 1721

A Bill for an Act Relating to a State Cultural Public Market.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that, unlike anywhere else in the United States, Hawaii's population comprises a multitude of ethnic groups and cultures. Hawaii serves as a melting pot of many different cultures that happily co-exist and commingle to form a richly diverse environment that makes Hawaii unique. Such diversity is apparent in the wide variety of ethnic foods, clothing, artworks and crafts, and entertainment available throughout the state. Cultural diversity is also evident in the many cultural festivals held throughout the year that allow residents and visitors alike to experience the tastes, sights, and sounds of different ethnic groups.

Although this cultural diversity can be experienced on a daily basis in Hawaii, we lack a single venue to experience and learn more about the host Hawaiian culture as well as the many different cultures that reflect the populace of our islands. To promote cultural awareness as well as economic development within the state, we must capitalize on the rich diversity of the many different cultures found within Hawaii. Across the nation, cities such as Seattle, Washington; Portland, Maine; Los Angeles, California; and New York City, New York, have experienced great economic success as a result of the establishment of local public or farmer's markets. The creation of new business opportunities for Hawaii entrepreneurs, including local farmers and locally-owned businesses, will help to spur growth in our local economy.

The purpose of this Act is to establish a cultural public market in the city and county of Honolulu, on state-owned land within the Kakaako Makai area. The cultural public market will provide an opportunity, at a single venue, for exposure to, and education and awareness of, the host Hawaiian culture and the many ethnic groups present within the state through the sale of ethnic foods, produce, and products, the exhibition and sale of cultural artworks and crafts, the showcasing of artists and entertainers, and the presentation of information on the culture and history of the various ethnic groups in Hawaii.

SECTION 2. (a) There shall be established within the Hawaii community development authority a state cultural public market.

(b) The cultural public market shall be located on state land within the Kakaako Makai area and developed pursuant to sections 206E-31, 206E-32, and 206E-33, Hawaii Revised Statutes. A public parking lot shall be included.

(c) The Hawaii community development authority shall:

- (1) Designate and develop the state-owned land for the cultural public market;
- (2) Accept, for consideration, input regarding the establishment of the cultural public market from the following departments and agencies:
  - (A) The department of agriculture;
  - (B) The department of business, economic development, and tourism;
  - (C) The department of land and natural resources;
  - (D) The department of labor and industrial relations; and
  - (E) The Hawaii tourism authority;
- (3) Consider and determine the propriety of using public-private partnerships in the development and operation of the cultural public market;
- (4) Develop, distribute, and accept requests for proposals from private entities for plans to develop and operate the cultural public market; and
- (5) Ensure that the Hawaiian culture is the featured culture in the cultural public market.

(d) Requests for proposals for the cultural public market shall contemplate but not be limited to the inclusion of the following types of facilities and services:

- (1) Retail outlets for ethnically diverse products;
- (2) Venues for businesses with ethnic themes, including restaurants and other service-related businesses;
- (3) Theaters, stages, and arenas designed to showcase cultural performing artists as well as community performing arts;
- (4) Exhibition space or museums that showcase artwork created by international and local artists; and
- (5) Museums or other educational facilities focusing on the history and cultures of the various ethnic groups within Hawaii, including Hawaiian history.

SECTION 3. This Act shall take effect on October 1, 2005.

(Became law on July 12, 2005, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

**ACT 232**

S.B. NO. 1883

A Bill for an Act Relating to Miloli'i Fisheries Management Area.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds and declares that:

- (1) Miloli'i on the South Kona coast of the island of Hawaii is well known as one of the last predominantly traditional Hawaiian fishing villages. Isolated by its remote location from much of the development that has altered the coastline of Hawaii, the community at Miloli'i has retained its identity as a traditional Hawaiian fishing village;
- (2) The community of Miloli'i is dependent on the catch of nearshore fish for a significant portion of their nutritional needs;
- (3) Over the past few decades, the marine resources of Miloli'i unfortunately have been degraded primarily through over harvesting;
- (4) The Miloli'i community is concerned about this decline and believes that current regulations and management strategies for the area are not sufficient to ensure sustainable stocks of fish and good catch for their subsistence needs. If the current population decline continues, the health and economic well being of the community will be in jeopardy;
- (5) To avoid that possibility, the community of Miloli'i seeks to establish a traditional, community based subsistence fishing area to ensure the long-term sustainability of nearshore marine fish populations and the survival of the community's culture, well being, and way of life. This area will front the Miloli'i fishing village and portions of the South Kona wilderness area, thus helping to manage the Kapalilua ahupua'a. The community based subsistence fishing area will cover the entire extent of the existing Miloli'i fisheries management area; and
- (6) As the first designated community based subsistence fishing area, Miloli'i would be a valuable asset for scientific research concerning the effects of such subsistence management. Fish counts and similar studies would strongly be encouraged to determine the relationship between an abundance and diversity of nearshore marine life species and a community based subsistence fishing area such as Miloli'i.

SECTION 2. Chapter 188, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§188- Miloli‘i fisheries management area. The Miloli‘i fisheries management area, as defined in the administrative rules of the department of land and natural resources, shall be designated a community based subsistence fishing area, as provided in section 188-22.6. The department of land and natural resources shall adopt management strategies and other rules consistent with section 188-22.6 that:

- (1) Ensure long-term sustainable populations of fish and other marine species; and
- (2) Encourage the scientific study and understanding of subsistence fishing management.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Became law on July 12, 2005, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

**Note**

- 1. Edited pursuant to HRS §23G-16.5.

**ACT 233**

S.B. NO. 1267

A Bill for an Act Relating to Shark Monitoring.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that there are growing incidents of shark attacks in this State. To understand shark activity, there is a need to collect and interpret data about shark movements and habits of migration.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$25,000 or so much thereof as may be necessary for fiscal year 2005-2006 for the department of land and natural resources, in conjunction with the Hawaii institute of marine biology, to hire a contractor to tag and monitor sharks along the leeward coast of Oahu from Pearl Harbor to Kaena Point.

The sum appropriated shall be expended by the department of land and natural resources, in conjunction with the Hawaii institute of marine biology, for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2005.

(Became law on July 12, 2005, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

**ACT 234**

H.B. NO. 1641

A Bill for an Act Relating to Non-Agricultural Park Lands.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 166E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

## ACT 235

**“§166E- Non-agricultural park lands special fund; established.** (a) There is established in the state treasury the non-agricultural park lands special fund, into which shall be deposited:

- (1) Legislative appropriations to the fund; and
- (2) All lease rent, fees, penalties, and any other revenue or funds collected from non-agricultural park lands that are transferred, or in the process of being transferred, to the department under this chapter.

(b) Moneys in the special fund shall be used to defray the costs incurred in managing, administering, and overseeing non-agricultural park lands that are transferred, or in the process of being transferred, to the department under this chapter.

(c) The department shall administer the non-agricultural park lands special fund.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect on July 1, 2005.

(Became law on July 12, 2005, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 235

S.B. NO. 1729

A Bill for an Act Relating to Tourism.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The tourism industry plays a large role in the health of Hawaii’s economy. Consequently, the State’s growth is strongly correlated to the rate of economic expansion in U.S. and international tourist markets. The legislature finds that an increase in funding is necessary to preserve and strengthen the tourism industry.

The legislature further finds that investment in tourism is critical to ensure that Hawaii maintains a successful and sustainable tourism industry. The Hawaii tourism authority recently completed the Hawaii tourism strategic plan: 2005-2015, with assistance from industry, government, and the community. The plan broadened the roles and responsibilities of the Hawaii tourism authority by identifying the Hawaii tourism authority as the lead or support in all nine strategic initiatives and in the overall management of the tourism special fund. One of the critical programs implements a safety and security budget. These moneys would be used to pay for existing programs such as the visitor assistance program and the implementation of the aloha aina patrol. It is imperative that the Hawaii tourism authority be given additional resources to effectively and efficiently implement its programs. This would mean an increased focus in areas such as safety and security, workforce development, and communications.

The Hawaii tourism authority provides funding for various visitor assistance programs. Moneys for these programs are derived in part from the transient accommodations tax. With the dedicated source of funding established under this Act for safety and security programs, the Hawaii tourism authority will have the latitude to fund existing programs or establish new ones, such as the aloha aina patrol, which will operate under the jurisdiction of each respective county. The Hawaii tourism



authority has received numerous awards for its support of visitor safety programs and hopes to improve its efforts in this area.

The legislature further finds that increasing the percentage the Hawaii tourism authority receives from the transient accommodations tax is necessary to ensure funding for other areas as well. State parks and trail systems are in critical need of upgrade and maintenance. An increase in the percentage that the Hawaii tourism authority receives from the transient accommodations tax will ensure a dedicated source of revenue for state parks and the statewide trails and access program to benefit residents and visitors alike, and an increase in revenues for the general fund will assist in supporting programs such as education, health, and infrastructure.

Act 156, Session Laws of Hawaii 1998, created the Hawaii tourism authority to establish, among other things, a mechanism for funding tourism. Act 156 specified that 37.9 per cent of the transient accommodations tax was to be earmarked to create a tourism special fund to fund tourism activities by the Hawaii tourism authority.

Act 250, Session Laws of Hawaii 2002 (Act 250), reduced the percentage of transient accommodations tax revenues from 37.9 per cent to 32.6 per cent. Act 250 also established the transient accommodations tax trust fund (trust fund) to serve as a holding account for transient accommodations tax revenues to supplement shortfalls in the tourism special fund. All investment earnings from moneys in the trust fund are credited to the general fund. However, these moneys could have been used instead to accumulate reserves in the trust fund.

The purpose of this Act is to support tourism-related activities and improve management of the Hawaii tourism authority by, among other things:

- (1) Adding the executive director of the Hawaii state foundation on culture and the arts as an ex officio nonvoting member of the board of directors of the Hawaii tourism authority;
- (2) Providing that all ex officio members of the HTA board are nonvoting;
- (3) Allowing the executive director of the Hawaii tourism authority to provide for the appointment of officers, agents, and employees, subject to the approval of the board, prescribing their duties and qualifications, and fixing their salaries; provided that there is no anticipated revenue shortfall in the tourism special fund and that funds have been appropriated by the legislature and allotted as provided by law;
- (4) Placing the convention center enterprise special fund and the tourism special fund outside the state treasury;
- (5) Allowing moneys in the convention center enterprise special fund and the tourism special fund to be placed in interest-bearing accounts and invested, subject to certain limitations;
- (6) Increasing the allocation of transient accommodations tax revenue deposited in the tourism special fund;
- (7) Repealing the transient accommodations tax trust fund; and
- (8) Revising the current allocation of transient accommodations tax revenue for the state parks special fund and the special land and development fund.

SECTION 2. Section 184-3.4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established within the state treasury a fund to be known as the state parks special fund, into which shall be deposited:

- (1) All proceeds collected by the state parks programs involving park user fees, any leases or concession agreements, the sale of any article purchased from the department to benefit the state parks programs, or

any gifts or contributions; provided that proceeds derived from the operation of Iolani Palace shall be used to supplement its educational and interpretive programs; and

- (2) Transient accommodations tax revenues pursuant to section [237D-6.5(b)(2);] 237D-6.5; provided that these moneys shall be expended in response to a master plan developed in coordination with the Hawaii tourism authority.”

SECTION 3. Section 198D-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The trail and access program shall use funding for the management, maintenance, and development of trails and trail accesses under the jurisdiction of the department from the following sources:

- (1) A portion of the highway fuel taxes collected under chapter 243;
- (2) Federal government grants;
- (3) Private contributions;
- (4) Fees, established pursuant to administrative rules and charged by the department for the commercial and other use of trails and trail accesses under the jurisdiction of the department; and
- (5) Transient accommodations tax revenues pursuant to section [237D-6.5(b)(2);] 237D-6.5.”

SECTION 4. Section 201B-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The authority shall be headed by a policy-making board of directors which consists of twelve public, voting members, [~~one ex officio voting member,~~] and [~~two~~] four ex officio nonvoting members; provided that:

- (1) Twelve public, voting members shall be appointed by the governor as provided in section 26-34, except as otherwise provided by law;
- (2) The twelve public, voting members shall be composed of at least one representative each from the city and county of Honolulu and the counties of Hawaii, Kauai, and Maui; the remaining public members shall be appointed at-large;
- (3) Of the twelve public, voting members, three shall be appointed by the governor from a list of three names submitted for each appointment by the president of the senate, and three shall be appointed by the governor from a list of three names submitted for each appointment by the speaker of the house of representatives; provided that if fewer than three names are submitted for each appointment, the governor may disregard the list;
- (4) At least six of the twelve public, voting members shall have knowledge, experience, and expertise in the area of visitor industry management, marketing, promotion, transportation, retail, entertainment, or visitor attractions, and at least one shall have knowledge, experience, and expertise in the area of Hawaiian cultural practices; provided that no more than three members shall represent, be employed by, or be under contract to any sector of the industry represented on the board;
- (5) The governor shall make appointments to ensure the fulfillment of all requirements; provided that any appointments made after July 1, 2002, shall be made to fulfill the requirements in place when the appointments are made;

- (6) The director of business, economic development, and tourism, or a designated representative, shall be an ex officio [~~voting~~] nonvoting member;
- (7) The director of transportation, or a designated representative, shall be an ex officio nonvoting member; [~~and~~]
- (8) The chairperson of the board of land and natural resources, or a designated representative, shall be an ex officio nonvoting member[.]; and
- (9) The executive director of the state foundation on culture and the arts, or a designated representative, shall be an ex officio nonvoting member.”

SECTION 5. Section 201B-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) Except as otherwise limited by this chapter, the authority may:
- (1) Sue and be sued;
  - (2) Have a seal and alter the same at pleasure;
  - (3) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter; provided that the authority may enter into contracts and agreements for a period of up to five years, subject to the availability of funds; and provided further that the authority may enter into agreements for the use of the convention center facility for a period of up to ten years;
  - (4) Make and alter bylaws for its organization and internal management;
  - (5) Unless otherwise provided in this chapter, adopt rules in accordance with chapter 91 with respect to its projects, operations, properties, and facilities;
  - (6) Through its executive director represent the authority in communications with the governor and with the legislature;
  - (7) Through its executive director [~~appoint~~], provide for the appointment of officers, agents, and employees, [~~prescribe~~] subject to the approval of the board, prescribing their duties and qualifications, and [~~fix~~] fixing their salaries, without regard to chapters 76 and 78<sup>1</sup> if there is no anticipated revenue shortfall in the tourism special fund and funds have been appropriated by the legislature and allotted as provided by law;
  - (8) Through its executive director purchase supplies, equipment, or furniture;
  - (9) Through its executive director allocate the space or spaces which are to be occupied by the authority and appropriate staff;
  - (10) Engage the services of qualified persons to implement the State’s tourism marketing plan or portions thereof as determined by the authority;
  - (11) Engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;
  - (12) Procure insurance against any loss in connection with its property and other assets and operations in such amounts and from such insurers as it deems desirable;
  - (13) Contract for or accept revenues, compensation, proceeds, and gifts or grants in any form from any public agency or any other source, including any revenues or proceeds arising from the operation or use of the convention center;
  - (14) Develop, coordinate, and implement state policies and directions for tourism and related activities taking into account the economic, social, and physical impacts of tourism on the State and its natural resources infrastructure; provided that the authority shall support the efforts of other state and county departments or agencies to manage, improve,

- and protect Hawaii’s natural environment and areas frequented by visitors;
- (15) Have a permanent, strong focus on marketing and promotion;
  - (16) Conduct market development-related research as necessary;
  - (17) Coordinate all agencies and advise the private sector in the development of tourism-related activities and resources;
  - (18) Work to eliminate or reduce barriers to travel in order to provide a positive and competitive business environment, including coordinating with the department of transportation on issues affecting airlines and air route development;
  - (19) Market and promote sports-related activities and events;
  - (20) Coordinate the development of new products with the counties and other public sectors and private sectors, including the development of sports, culture, health and wellness, education, technology, agriculture, and nature tourism;
  - (21) Establish a public information and educational program to inform the public of tourism and tourism-related problems;
  - (22) Encourage the development of tourism educational, training, and career counseling programs;
  - (23) Establish a program to monitor, investigate, and respond to complaints about problems resulting directly or indirectly from the tourism industry and taking appropriate action as necessary;
  - (24) Set and collect rents, fees, charges, or other payments for the lease, use, occupancy, or disposition of the convention center facility without regard to chapter 91;
  - (25) Notwithstanding the provisions of chapter 171, acquire, lease as lessee or lessor, own, rent, hold, and dispose of the convention center facility in the exercise of its powers and the performance of its duties under this chapter; and
  - (26) Acquire by purchase, lease, or otherwise, and develop, construct, operate, own, manage, repair, reconstruct, enlarge, or otherwise effectuate, either directly or through developers, a convention center facility.’

SECTION 6. Section 201B-8, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§201B-8]]~~ **Convention center enterprise special fund.** (a) There is established ~~[in the state treasury]~~ the convention center enterprise special fund, into which shall be deposited:

- (1) A portion of the revenues from the transient accommodations tax, as provided by section 237D-6.5;
- (2) All revenues or moneys derived from the operations of the convention center to include all revenues from the food and beverage service, all revenues from the parking facilities or from any concession, and all revenues from the sale of souvenirs, logo items, or any other items offered for purchase at the convention center;
- (3) Private contributions, interest, compensation, gross or net revenues, proceeds, or other moneys derived from any source or for any purpose arising from the use of the convention center facility; and
- (4) Appropriations by the legislature, including any transfers from the tourism special fund established under section 201B-11 for marketing the facility pursuant to section ~~[[201B-7(a)(7)]]~~.

(b) Moneys in the convention center enterprise special fund shall be used by the authority for the payment of any and all debt service relating to the convention

center, any expense arising from any and all use, operation, maintenance, alteration, improvement, or any unforeseen or unplanned repairs of the convention center, including without limitation the food and beverage service and parking service provided at the convention center facility, the sale of souvenirs, logo items, or other items, for any future major repair, maintenance, and improvement of the convention center facility as a commercial enterprise or as a world class facility for conventions, entertainment, or public events, and for marketing the facility pursuant to section ~~[[201B-7(a)(7)]{}~~.

(c) Moneys in the convention center enterprise special fund may be:

- (1) Placed in interest-bearing accounts; provided that the depository in which the money is deposited furnishes security as provided in section 38-3; or
- (2) Otherwise invested by the authority until such time as the moneys may be needed; provided that the authority shall limit its investments to those listed in section 36-21.

All interest accruing from investment of the moneys shall be credited to the convention center enterprise special fund.”

SECTION 7. Section 201B-11, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) There is established [~~in the state treasury~~] the tourism special fund, into which shall be deposited:

- (1) A portion of the revenues from any transient accommodations tax, as provided by section 237D-6.5;
- (2) Appropriations by the legislature to the tourism special fund;
- (3) Gifts, grants, and other funds accepted by the authority; and
- (4) All interest and revenues or receipts derived by the authority from any project or project agreements.

(b) Moneys in the tourism special fund may be [~~placed in interest-bearing accounts or otherwise invested by the authority until such time as the moneys may be needed.~~];

- (1) Placed in interest-bearing accounts; provided that the depository in which the money is deposited furnishes security as provided in section 38-3; or
- (2) Otherwise invested by the authority until such time as the moneys may be needed; provided that the authority shall limit its investments to those listed in section 36-21.

All interest accruing from the investment of these moneys shall be credited to the tourism special fund.”<sup>2</sup>

SECTION 8. Section 237D-6.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Revenues collected under this chapter shall be distributed as follows[;], with the excess revenues to be deposited into the general fund:

- (1) 17.3 per cent of the revenues collected under this chapter shall be deposited into the convention center enterprise special fund established under section 201B-8; provided that beginning January 1, 2002, if the amount of the revenue collected under this paragraph exceeds \$31,000,000 in any calendar year, revenues collected in excess of \$31,000,000 shall be deposited into the general fund;
- (2) [~~32.6~~] 34.2 per cent of the revenues collected under this chapter shall be deposited into the tourism special fund established under section

201B-11 for tourism promotion and visitor industry research; provided that beginning on July 1, 2002:

- (A) ~~[If the amount of revenues deposited into the tourism special fund exceeds \$62,292,000 in any fiscal year, of]~~ Of the first \$1,000,000 in revenues deposited ~~[in excess of \$62,292,000]:~~
  - (i) Ninety per cent shall be deposited into the state parks special fund established in section 184-3.4; and
  - (ii) Ten per cent shall be deposited into the special land and development fund established in section 171-19 for the Hawaii statewide trail and access program;

~~[provided that the total amount deposited into the state parks special fund and to the special land and development fund for the Hawaii statewide trail and access program shall not exceed \$1,000,000 in any fiscal year;]~~

provided that of the 34.2 per cent, 0.5 per cent shall be transferred to a sub-account in the tourism special fund to provide funding for a safety and security budget, in accordance with the Hawaii tourism strategic plan 2005-2015; and

- (3) 44.8 per cent of the revenues collected under this chapter shall be transferred as follows: Kauai county shall receive 14.5 per cent, Hawaii county shall receive 18.6 per cent, city and county of Honolulu shall receive 44.1 per cent, and Maui county shall receive 22.8 per cent~~;~~ and
- (4) ~~5.3 per cent of the revenues collected under this chapter shall be deposited into the transient accommodations tax trust fund established under section 237D-5.5.].~~

All transient accommodations taxes shall be paid into the state treasury each month within ten days after collection, and shall be kept by the state director of finance in special accounts for distribution as provided in this subsection.”

SECTION 9. Section 237D-5.5, Hawaii Revised Statutes, is repealed.

SECTION 10. Upon repeal of the transient accommodations tax trust fund by section 9 of this Act, any remaining moneys in the fund shall be transferred to the general fund.

SECTION 11. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 12. Statutory material to be repealed is bracketed and stricken.<sup>3</sup> New statutory material is underscored.

SECTION 13. This Act shall take effect on July 1, 2005; provided that sections 8 and 9 shall take effect on July 1, 2007.

(Became law on July 12, 2005, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

Notes

- 1. Prior to amendment “;” appeared here.
- 2. Sentence should not be underscored.
- 3. Edited pursuant to HRS §23G-16.5.

## ACT 236

S.B. NO. 1620

A Bill for an Act Relating to State Funds.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that expenditures from the emergency and budget reserve fund established by section 328L-3, Hawaii Revised Statutes, are needed to meet the emergency economic situation currently facing the State. The legislature determines that the moneys are urgently needed to maintain levels of programs that are essential to the public health, safety, and welfare. The legislature further finds that the grants and subsidies under this Act are in the public interest and serve the public health, safety, and welfare.

The legislature further finds that portions of the grants and subsidies under Act 45, Session Laws of Hawaii 2004, have not been expended or otherwise encumbered, and those moneys should be utilized to reduce the appropriations under this Act.

SECTION 2. The appropriations contained in the following sections of Act 45, Session Laws of Hawaii 2004, for fiscal year 2004-2005, shall not lapse on June 30, 2005; provided that all moneys from the appropriations that are unencumbered as of June 30, 2007, shall lapse as of that date:

- (1) Section 2, appropriation to Hale Mahaolu;
- (2) Section 4, appropriation to Hawaii Youth Services Network;
- (3) Section 29, appropriation to Family Support Services of West Hawaii;
- (4) Section 30, appropriation to Friends of Foster Kids;
- (5) Section 31, appropriation to Na Lei Wili Area Health Education Center;
- (6) Section 34, appropriation to Parents and Children Together;
- (7) Section 36, appropriation to the Boys and Girls Club of Hawaii, as amended by this Act;
- (8) Section 39, appropriation to Ho'oumau Ke Ola, as amended by this Act; and
- (9) Section 41, appropriation to Kokua Kalihi Valley Comprehensive Family Services.

SECTION 3. There is appropriated out of the emergency and budget reserve fund the sum of \$208,000 or so much thereof as may be necessary for fiscal year 2005-2006 and the same sum or so much thereof as may be necessary for fiscal year 2006-2007 as a purchase of service pursuant to chapter 103F, Hawaii Revised Statutes, to provide treatment services for child victims of intrafamilial sexual abuse, including psychological treatment and case management services for child victims and their families who are not covered under the child protective services system of the department of human services.

The sums appropriated shall be expended by the judiciary via the children's justice center in accordance with chapter 103F, Hawaii Revised Statutes, for the purposes of this section.

SECTION 4. There is appropriated out of the emergency and budget reserve fund the sum of \$636,000, or so much thereof as may be necessary for fiscal year 2005-2006, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Kapiolani Medical Center for Women and Children Sex Abuse Treatment Center for the provision of sexual assault direct services throughout Hawaii.

The sum appropriated shall be expended by the department of health for the purposes of this section.

**SECTION 5.** There is appropriated out of the emergency and budget reserve fund the sum of \$100,000, or so much thereof as may be necessary for fiscal year 2005-2006, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for Catholic Charities of the Diocese of Honolulu for the Lanakila Multi-Purpose Senior Center.

The sum appropriated shall be expended by the department of health for the purposes of this section.

**SECTION 6.** There is appropriated out of the emergency and budget reserve fund the sum of \$25,000, or so much thereof as may be necessary for fiscal year 2005-2006, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for the senior center program at the Moiliili Community Center.

The sum appropriated shall be expended by the department of health for the purposes of this section.

**SECTION 7.** There is appropriated out of the emergency and budget reserve fund the sum of \$55,000, or so much thereof as may be necessary for fiscal year 2005-2006, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for the senior support program at the Waikiki Community Center.

The sum appropriated shall be expended by the department of health for the purposes of this section.

**SECTION 8.** There is appropriated out of the emergency and budget reserve fund the sum of \$120,000, or so much thereof as may be necessary for fiscal year 2005-2006, as a subsidy pursuant to chapter 42F, Hawaii Revised Statutes, to the St. Francis Medical Center for the operations of the bone marrow registry.

The sum appropriated shall be expended by the department of health for the purposes of this section.

**SECTION 9.** There is appropriated out of the emergency and budget reserve fund the sum of \$450,000, or so much thereof as may be necessary for fiscal year 2005-2006, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for staff salaries including a full-time physician, a half-time psychologist, two full-time nurses, one substance and abuse counselor, and other support staff necessary for the operation of the West Hawaii community health center located in Kailua-Kona on the island of Hawaii.

The sum appropriated shall be expended by the department of health for the purposes of this section.

**SECTION 10.** There is appropriated out of the emergency and budget reserve fund the sum of \$750,000, or so much thereof as may be necessary for fiscal year 2005-2006, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for emergency room subsidy at the Waianae District Comprehensive Health and Hospital Board Inc. dba Waianae Coast Comprehensive Health Center.

The sum appropriated shall be expended by the department of health for the purposes of this section.

**SECTION 11.** There is appropriated out of the emergency and budget reserve fund the sum of \$2,250,000, or so much thereof as may be necessary for fiscal year 2005-2006, as grants pursuant to chapter 42F, Hawaii Revised Statutes, for indigent care:

|                              |           |
|------------------------------|-----------|
| Hana Community Health Center | \$750,000 |
| Kahuku Hospital              | \$750,000 |
| Molokai General Hospital     | \$750,000 |



The sum appropriated shall be expended by the department of health for the purposes of this section.

SECTION 12. There is appropriated out of the emergency and budget reserve fund the sum of \$200,000, or so much thereof as may be necessary for fiscal year 2005-2006, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for dental health services for the indigent at the Oral Health Institute of the Pacific.

The sum appropriated shall be expended by the department of health for the purposes of this section.

SECTION 13. There is appropriated out of the emergency and budget reserve fund the sum of \$250,000, or so much thereof as may be necessary for fiscal year 2005-2006, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Hawaii Primary Care Association to pay for technology, acquisition, expansion, or upgrading of facilities and equipment necessary to provide dental services at federally qualified health centers.

The sum appropriated shall be expended by the department of health for the purposes of this section.

SECTION 14. There is appropriated out of the emergency and budget reserve fund the sum of \$485,000, or so much thereof as may be necessary for fiscal year 2005-2006, for payment of residential services provided by developmental disabilities domiciliary homes and developmental disabilities apartment complexes.

The sum appropriated shall be expended by the department of health for the purposes of this section.

SECTION 15. There is appropriated out of the emergency and budget reserve fund the sum of \$900,000, or so much thereof as may be necessary for fiscal year 2005-2006, for the purpose of supporting and expanding the chore services program so that this program can continue to provide high-quality elder care as well as disabled services to Hawaii's elderly and disabled populations.

The sum appropriated shall be expended by the department of human services for the purposes of this section.

SECTION 16. There is appropriated out of the emergency and budget reserve fund the sum of \$500,000, or so much thereof as may be necessary for fiscal year 2005-2006, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Hawaii Youth Services Network for its Transitional Living Program for Unserved Street Youth.

The sum appropriated shall be expended by the office of youth services of the department of human services for the purposes of this section.

SECTION 17. There is appropriated out of the emergency and budget reserve fund the sum of \$250,000, or so much thereof as may be necessary for fiscal year 2005-2006, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for home instruction for parents of pre-school children in West Hawaii by the Family Support Services of West Hawaii.

The sum appropriated shall be expended by the department of human services for the purposes of this section.

SECTION 18. There is appropriated out of the emergency and budget reserve fund the sum of \$96,000, or so much thereof as may be necessary for fiscal year 2005-2006, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for Hale Mahaolu.

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The sum appropriated shall be expended by the department of human services for the purposes of this section.

SECTION 19. There is appropriated out of the emergency and budget reserve fund the sum of \$250,000, or so much thereof as may be necessary for fiscal year 2005-2006, as a grant pursuant to Chapter 42F, Hawaii Revised Statutes, for the Kapiolani Medical Center for Women and Children for the Kapiolani C.A.R.E. program.

The sum appropriated shall be expended by the department of human services for the purposes of this section.

SECTION 20. Act 45, Session Laws of Hawaii 2004, is amended by amending section 36 to read as follows:

“SECTION 36. There is appropriated out of the emergency and budget reserve fund the sum of \$85,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Boys and Girls Club of Hawaii to assist in the completion and operations of the Teen Center at Nanakuli high and intermediate school.

The sum appropriated shall be expended by the office of youth services, department of human services, for the purposes of this section.”

SECTION 21. There is appropriated out of the emergency and budget reserve fund the sum of \$175,000, or so much thereof as may be necessary for fiscal year 2005-2006, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for the Domestic Violence Legal Hotline for Maui program services.

The sum appropriated shall be expended by the judiciary, circuit court of the second circuit, for the purposes of this section.

SECTION 22. There is appropriated out of the emergency and budget reserve fund the sum of \$1,000,000, or so much thereof as may be necessary for fiscal year 2005-2006, for costs related to homeless assistance, to be expended as follows:

- (1) \$935,000 shall be expended by the housing and community development corporation of Hawaii in accordance with chapter 103F, Hawaii Revised Statutes;
- (2) \$65,000, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Honolulu Community Action Program, Inc., for personnel to provide supervision and outreach services to the homeless temporarily housed at designated public locations on Oahu, including public parks, unused government facilities, and abandoned military facilities, in a manner consistent with health and safety rules, to be expended by the department of labor and industrial relations.

SECTION 23. There is appropriated out of the emergency and budget reserve fund the sum of \$170,000, or so much thereof as may be necessary for fiscal year 2005-2006 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for Maui Economic Opportunity, Inc., and its night transportation service for dialysis treatment programs in Maui county.

The sum appropriated shall be expended by the office of community services of the department of labor and industrial relations for the purposes of this section.

SECTION 24. Act 45, Session Laws of Hawaii 2004, is amended by amending section 39 to read as follows:

“SECTION 39. There is appropriated out of the emergency and budget reserve fund the sum of \$25,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Ho‘omau Ke Ola for the Weed and Seed Program to collaborate with and support existing programs on the Waianae Coast.

The sum appropriated shall be expended by the office of community services, department of labor and industrial relations, for the purposes of this section.”

SECTION 25. There is appropriated out of the emergency and budget reserve fund the sum of \$100,000, or so much thereof as may be necessary for fiscal year 2005-2006, for a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Kokua Legal Services, Inc., to provide legal and housing assistance to low-income families.

The sum appropriated shall be expended by the office of community services, department of labor and industrial relations, for the purposes of this section.

SECTION 26. There is appropriated out of the emergency and budget reserve fund the sum of \$30,000, or so much thereof as may be necessary for fiscal year 2005-2006, for nurse training, including a clinical component, teaching by qualified instructors, nurses review course, and certified nursing assistance course. The training shall target students who are registered nurses who have not been previously employed as nurses; graduates of nursing schools, including foreign nursing schools, who are preparing for the licensure examination; certified nursing assistant students; and graduates of a certified nursing assistant school program. There shall be a nurse recruitment component of the training to recruit qualified nurses from foreign countries and to recruit and train qualified nursing instructors.

The sum appropriated shall be expended by the Kapiolani Community College, University of Hawaii, for purposes of this section.

SECTION 27. This Act shall take effect on July 1, 2005; provided that section 2 of this Act shall take effect on June 30, 2005.

(Became law on July 12, 2005, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

## ACT 237

H.B. NO. 1556

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Industrial Enterprises.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare of the State.

SECTION 2. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue in one or more series special purpose revenue bonds in a total amount not to exceed \$25,000,000 for the purpose of assisting PLK Air Services Group LLC, with the planning, design, and construction of, and obtaining equipment, furnishings and apparatus for, a Kona coffee and macadamia manufacturing facility and air cargo logistics and fulfillment center at Kona international airport. The legislature finds

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and determines that the activity and facilities of PLK Air Services Group LLC, constitute a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to an industrial enterprise.

SECTION 3. The special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist industrial enterprises.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2010, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and any refunding of special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2010.

SECTION 6. This Act shall take effect on July 1, 2005.

(Became law on July 12, 2005, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 238

H.B. NO. 1146

A Bill for an Act Relating to Civil Service.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that it is necessary to maintain an updated social worker series in the executive branch to make a positive difference in the provision of public social services. The department of human resources development conducted a classification study primarily to address the State's problems in recruiting and retaining social workers. Consequently, the department of human resources development established the social worker/human services professional series. Employees within this classification include both individuals who possess degrees in social work and those who do not.

The legislature finds that the importance of the social work profession should be recognized to facilitate the recruitment and retention of social workers in the executive branch. It promotes the maintenance of high standards of qualifications, education, and experience for those who hold themselves out to be social workers. The legislature also finds that it is in the best interest of the State to maintain an updated social worker series in the executive branch to provide essential social services to the State's most vulnerable populations.

As a result of discussions between the department of human resources development and the various stakeholders, the department shall maintain the social worker series and revise the minimum qualification requirements to require a social work degree from a program accredited by the Council on Social Work Education,

the Western Association of Schools and Colleges, or a comparable regional accreditation body. The department will also retain a separate human services professional series for employees who do not possess a social work degree. The department will inform affected employees of the actions to be taken prior to taking the actions. These actions will be taken as soon as possible, but no later than January 1, 2006.

The aforementioned actions will not affect positions and employees who have been reallocated from the social worker series to the parole officer series and the child and adult protective services specialist series.

SECTION 2. (a) On or before January 1, 2006, the department of human resources development, in consultation and coordination with the parties set forth below, shall develop a transition plan covering employees within the social worker series who do not possess a social work degree:

- (1) The Hawaii Chapter of the National Association of Social Workers;
- (2) The University of Hawaii School of Social Work;
- (3) Hawaii Pacific University School of Social Work;
- (4) Brigham Young University School of Social Work;
- (5) The Hawaii Government Employees Association;
- (6) The department of education;
- (7) The department of health;
- (8) The department of human services;
- (9) The department of public safety; and
- (10) Any other affected department or agency.

The plan may examine the intent of the legislature to require licensure for social workers employed by the executive branch and appropriate compensation for those who are licensed. The plan shall demonstrate the intent of the legislature to establish a preference for social workers in the provision of services to the public. The plan shall not apply to the judiciary, the Hawaii health systems corporation, or the counties.

(b) The department of human resources development shall submit a report to the legislature no later than twenty days prior to the convening of the regular session of 2006, which shall include the transition plan and actions taken to separate the social worker and human services professional series.

SECTION 3. Effective July 1, 2005, all persons who enter state service within the executive branch in the job classification series of social worker shall possess a bachelors, masters, or doctoral degree in social work.

SECTION 4. Positions that were reallocated from the social worker series to the social worker/human services professional series that are still occupied by the incumbents of the positions when the reallocations took place shall be placed in a class within the social worker series. Employees who do not possess a social work degree shall be reallocated to a class within the human services professional series on July 1, 2010, if they do not obtain a degree in social work prior to that date. Effective July 1, 2010, all persons employed by the executive branch as a social worker, excluding the Hawaii health systems corporation, shall possess a bachelor's, master's, or doctoral degree in social work. Those persons without social work degrees shall be human services professionals.

SECTION 5. This Act shall take effect on July 1, 2005.

(Became law on July 12, 2005, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

A Bill for an Act Relating to Psychotropic Medication.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. It is estimated that the most serious and disabling mental health conditions affect five to ten million adults and three to five million children in the United States. The consequences of mental illness for an individual and society are staggering. It can result in unnecessary disability, unemployment, substance abuse, homelessness, incarceration, and suicide. It is estimated that the economic cost of untreated mental illness in the United States exceeds one billion dollars each year.

According to the National Alliance for the Mentally Ill, mental illnesses are treatable. Mental illnesses are biologically based brain disorders and most people with serious mental illness need medication to help control symptoms. Treatments for serious mental illness today are highly effective; between seventy and ninety per cent of individuals have significant reduction of symptoms and improved quality of life with a combination of pharmacological and psychosocial treatment and supports.

However, treatment failures or breaks can lead to irreparable harm. The process of preauthorization of medicaid recipients before a licensed psychiatrist or physician can dispense medication to treat mental illness is difficult and time-consuming and can cause permanent injury to the patient in need. Many states have established cost controls to combat the rising cost of prescription medication. The legislature finds that while restrictions may reduce expenditures on drugs, the savings are offset by increases in service substitution costs elsewhere in the system.

The purpose of this Act is to improve access to psychotropic medication for a medicaid eligible person with a mental illness.

SECTION 2. Chapter 346, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§346- Psychotropic medication.** (a) The department shall not impose any restriction or limitation on the coverage for, or a recipient’s access to, psychotropic medication; provided that the psychotropic medication shall be prescribed by a licensed psychiatrist or by a licensed physician in consultation with a psychiatrist duly licensed in the State.

(b) As used in this section:

“Consultation” means communication by telephone, electronically, or face to face by a licensed psychiatrist and a licensed physician, during which the psychiatrist concurs with the prescription made. The psychiatrist’s concurring opinion shall be documented in the recipient’s medical record.

“Psychotropic medication” means only those agents approved by the United States Food and Drug Administration for the treatment of mental or emotional disorders.

(c) This section shall not apply to QUEST medical plans.

**§346- Pre-authorization exemption for psychotropic medication.** (a) A licensed physician may prescribe psychotropic medication pursuant to the laws of this State to an individual who is medicaid eligible without the requirement of any preauthorization procedure otherwise required by any other provision of this chapter; provided that the individual is in need of emergency psychiatric or psychological service.

(b) As used in this section:

“Emergency psychiatric or psychological service” means immediate administration or prescription of psychotropic medication not to exceed seven days by a licensed physician is required to avoid or mitigate significant adverse effects to the individual’s mental or emotional condition.

“Psychotropic medication” means only those agents approved by the United States Food and Drug Administration for the treatment of mental or emotional disorders.

(c) This section shall not apply to QUEST medical plans.”

SECTION 3. The department of human services shall report to the legislature no later than twenty days before the convening of the regular session of 2007. The report shall include:

- (1) The number of prescriptions written pursuant to this Act;
- (2) The cost and impact of psychiatrists or physicians prescribing medications pursuant to this Act that are not part of the existing formulary; and
- (3) The overall utilization under chapter 346, Hawaii Revised Statutes.

SECTION 4. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on July 1, 2005, and shall be repealed on June 30, 2007.

(Became law on July 12, 2005, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 240

S.B. NO. 294

A Bill for an Act Relating to Employment.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that a job should be a bridge out of poverty, an opportunity to make a living by working. But for minimum wage workers, especially those with families, it is not. The inflation-adjusted value of the minimum wage is twenty-four per cent lower today than it was in 1979. If the minimum wage kept pace with inflation since 1968, when it was \$1.60 an hour, the minimum wage would be \$8.46 an hour in 2003.

Nationally, about three and a half million workers worked full-time and year-round in 1999, yet they and their families lived in poverty. A 2001 United States Conference of Mayors study found that thirty-seven per cent of adults seeking emergency food aid were employed. Officials in sixty-three per cent of the cities surveyed identified low-paying jobs as a primary cause of hunger.

The legislature finds that the recent increases in minimum wage have not restored the lost value. Nor has the economy remained static. The State cannot boast of low unemployment when so many must work two jobs just to make ends meet.

The purpose of this Act is to raise the minimum wage and to clarify the definition of seaman, as it applies to the definition of “employee” under chapter 387, Hawaii Revised Statutes.

SECTION 2. Section 387-1, Hawaii Revised Statutes, is amended by amending the definition of “employee” to read as follows:

““Employee” includes any individual employed by an employer, but shall not include any individual employed:

- (1) At a guaranteed compensation totaling \$2,000 or more a month, whether paid weekly, biweekly, or monthly;
- (2) In agriculture for any workweek in which the employer of the individual employs less than twenty employees or in agriculture for any workweek in which the individual is engaged in coffee harvesting;
- (3) In domestic service in or about the home of the individual’s employer or as a house parent in or about any home or shelter maintained for child welfare purposes by a charitable organization exempt from income tax under section 501 of the federal Internal Revenue Code;
- (4) By the individual’s brother, sister, brother-in-law, sister-in-law, son, daughter, spouse, parent, or parent-in-law;
- (5) In a bona fide executive, administrative, supervisory, or professional capacity or in the capacity of outside salesperson or as an outside collector;
- (6) In the propagating, catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacean, sponge, seaweed, or other aquatic forms of animal or vegetable life, including the going to and returning from work and the loading and unloading of such products prior to first processing;
- (7) [As a seaman;] On a ship or vessel and who has a Merchant Mariners Document issued by the United States Coast Guard;
- (8) As a driver of a vehicle carrying passengers for hire operated solely on call from a fixed stand;
- (9) As a golf caddy;
- (10) By a nonprofit school during the time such individual is a student attending such school;
- (11) In any capacity if by reason of the employee’s employment in such capacity and during the term thereof the minimum wage which may be paid the employee or maximum hours which the employee may work during any workweek without the payment of overtime, are prescribed by the federal Fair Labor Standards Act of 1938, as amended, or as the same may be further amended from time to time; provided that if the minimum wage which may be paid the employee under the Fair Labor Standards Act for any workweek is less than the minimum wage prescribed by section 387-2, then section 387-2 shall apply in respect to the employees for such workweek; provided further that if the maximum workweek established for the employee under the Fair Labor Standards Act for the purposes of overtime compensation is higher than the maximum workweek established under section 387-3, then section 387-3 shall apply in respect to such employee for such workweek; except that the employee’s regular rate in such an event shall be the employee’s regular rate as determined under the Fair Labor Standards Act;
- (12) As a seasonal youth camp staff member in a resident situation in a youth camp sponsored by charitable, religious, or nonprofit organizations exempt from income tax under section 501 of the federal Internal Revenue Code or in a youth camp accredited by the American Camping Association; or
- (13) As an automobile salesperson primarily engaged in the selling of automobiles or trucks if employed by an automobile or truck dealer licensed under chapter 437.”



SECTION 3. Section 387-2, Hawaii Revised Statutes, is amended to read as follows:

“**§387-2 Minimum wages.** Except as provided in section 387-9 and this section, every employer shall pay to each employee employed by the employer, wages at the rate of not less than:

- ~~(1) \$5.25 per hour beginning January 1, 1993;~~
- ~~(2) \$5.75 per hour beginning January 1, 2002; and~~
- ~~(3) (1) \$6.25 per hour beginning January 1, 2003[-];~~
- ~~(2) \$6.75 per hour beginning January 1, 2006; and~~
- ~~(3) \$7.25 per hour beginning January 1, 2007.~~

The hourly wage of a tipped employee may be deemed to be increased on account of tips if the employee is paid not less than 25 cents below the applicable minimum wage by the employee’s employer and the combined amount the employee receives from the employee’s employer and in tips is at least 50 cents more than the applicable minimum wage.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Became law on July 12, 2005, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

## ACT 241

H.B. NO. 1051

A Bill for an Act Relating to Prescription Drugs.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 346, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

### “PART . MEDICAID PREAUTHORIZATION EXEMPTION

**§346- Findings.** The legislature finds that:

- (1) Patients who are medicaid recipients and who suffer from the human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, or who are in need of immunosuppressives as a result of organ transplants, have the least means available to obtain proper medications required to control their illnesses;
- (2) These medicaid recipients, if not promptly treated and maintained on effective medications, will, by the very nature of their illnesses, suffer greatly and may require increased medical care, including prolonged hospitalization, resulting in increased costs to these patients and society as a whole;
- (3) Failure to promptly treat a patient with the human immunodeficiency virus, acquired immune deficiency syndrome, or hepatitis C, and failure to use effective immunosuppressives during and after organ transplants, may result in increased suffering by the patients, the early or unnecessary loss of the patients’ lives, increased cost of medical care, and increased emotional, physical, financial, and societal costs;

- (4) It is ethically imperative that the physicians who treat medicaid recipient patients with human immunodeficiency virus, acquired immune deficiency syndrome, or hepatitis C, or patients who are in need of immunosuppressives before, during, and after transplant operations, have the unfettered ability to promptly medically intervene in treating these patients and to continue proven medications for those patients;
- (5) The procedure of requiring preauthorization of medicaid recipients before dispensing medications for the treatment of human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, and immunosuppressives needed for transplant patients, is unduly arduous, difficult, and too time-consuming for practitioners with large numbers of these patients who require immediate treatment to avoid permanent injury and other undesirable consequences; and
- (6) The imposition of a "first fail" plan before a physician can adjust or change a medication not on the approved list of medications is medically unsound. The condition of a seriously ill patient suffering from the human immunodeficiency virus, acquired immune deficiency syndrome, or hepatitis C, or who is in need of transplant immunosuppressives, will generally not remain stable for long without prompt treatment. If these persons are not more promptly and effectively treated, a significant probability exists that there will be a substantial increase in health care costs and hospitalizations, thereby increasing medical costs to the State.

**§346- Preauthorization exemption for certain physicians.** Any physician licensed in this State who treats a medicaid recipient patient suffering from the human immunodeficiency virus, acquired immune deficiency syndrome, or hepatitis C, or who is a patient in need of transplant immunosuppressives, may prescribe any medications approved by the United States Food and Drug Administration and that are eligible for Omnibus Budget Reconciliation Rebates Act (OBRA), that are necessary to treat the condition, without having to comply with the requirements of any preauthorization procedure established by any other provision of this chapter. This section shall not apply to QUEST medical plans."

SECTION 2. This Act shall take effect upon its approval.

(Became law on July 12, 2005, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

**ACT 242**

H.B. NO. 1378

A Bill for an Act Relating to the Judiciary.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 586-4, Hawaii Revised Statutes, is amended to read as follows:

**"§586-4 Temporary restraining order.** (a) Upon petition to a family court judge, an ex parte temporary restraining order may be granted without notice to restrain either or both parties from contacting, threatening, or physically abusing each other, notwithstanding that a complaint for annulment, divorce, or separation has not been filed. The order may be granted to any person who, at the time the order

is granted, is a family or household member as defined in section 586-1 or who filed a petition on behalf of a family or household member. The order shall enjoin the respondent or person to be restrained from performing any combination of the following acts:

- (1) Contacting, threatening, or physically abusing the protected party;
- (2) Contacting, threatening, or physically abusing any person residing at the protected party's residence; or
- (3) Entering or visiting the protected party's residence.

(b) For any person who is alleged to be a family or household member by virtue of a dating relationship, the court may consider the following factors in determining whether a dating relationship exists:

- (1) The length of the relationship;
- (2) The nature of the relationship; and
- (3) The frequency of the interaction between the parties.

(c) The family court judge may issue the ex parte temporary restraining order orally, if the person being restrained is present in court. The order shall state that there is probable cause to believe that a past act or acts of abuse have occurred, or that threats of abuse make it probable that acts of abuse may be imminent. The order further shall state that the temporary restraining order is necessary for the purposes of: preventing acts of abuse or preventing a recurrence of actual domestic abuse; and ensuring a period of separation of the parties involved. The order shall also describe in reasonable detail the act or acts sought to be restrained. Where necessary, the order may require either or both of the parties involved to leave the premises during the period of the order, and also may restrain the party or parties to whom it is directed from contacting, threatening, or physically abusing the applicant's family or household members. The order shall not only be binding upon the parties to the action, but also upon their officers, agents, servants, employees, attorneys, or any other persons in active concert or participation with them. The order shall enjoin the respondent or person to be restrained from performing any combination of the following acts:

- (1) Contacting, threatening, or physically abusing the protected party;
- (2) Contacting, threatening, or physically abusing any person residing at the protected party's residence; or
- (3) Entering or visiting the protected party's residence.

(d) If a divorce or a child custody proceeding is pending, a petition for a temporary restraining order may be filed in that same proceeding to the extent practicable. Any decree or order issued in a divorce or child custody proceeding subsequent to the petition being filed or an order being issued pursuant to this section, in the discretion of the court hearing the divorce or child custody proceeding, may supersede in whole or part the orders issued pursuant to this section. The factual findings and rulings made in connection with the granting or denying of a temporary restraining order may not have binding effect in any other family court proceeding, including child custody determinations under section 571-46, and the court in such proceedings may give de novo consideration to the facts and circumstances alleged in making later determinations affecting the parties, including determination of custody and visitation.

~~(d)~~ (e) When a temporary restraining order is granted and the respondent or person to be restrained knows of the order, a knowing or intentional violation of the restraining order is a misdemeanor. A person convicted under this section shall undergo domestic violence intervention at any available domestic violence program as ordered by the court. The court additionally shall sentence a person convicted under this section as follows:

- (1) For a first conviction for violation of the temporary restraining order, the person shall serve a mandatory minimum jail sentence of forty-

eight hours and be fined not less than \$150 nor more than \$500; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine; and

- (2) For the second and any subsequent conviction for violation of the temporary restraining order, the person shall serve a mandatory minimum jail sentence of thirty days and be fined not less than \$250 nor more than \$1,000; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine.

Upon conviction and sentencing of the defendant, the court shall order that the defendant immediately be incarcerated to serve the mandatory minimum sentence imposed; provided that the defendant may be admitted to bail pending appeal pursuant to chapter 804. The court may stay the imposition of the sentence if special circumstances exist.

The court may suspend any jail sentence, except for the mandatory sentences under paragraphs (1) and (2), upon condition that the defendant remain alcohol and drug-free, conviction-free, or complete court-ordered assessments or intervention. Nothing in this section shall be construed as limiting the discretion of the judge to impose additional sanctions authorized in sentencing for a misdemeanor.

~~(e)~~ (f) Any fines collected pursuant to subsection (d) shall be deposited into the spouse and child abuse special account established under section 601-3.6.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Became law on July 12, 2005, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

ACT 243

H.B. NO. 325

A Bill for an Act Relating to Employment Practices.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 392-41, Hawaii Revised Statutes, is amended as follows:

- 1. By amending subsection (b) to read:

“(b) During any period in which any plan or agreement or extension or modification thereof authorized under subsection (a)(4) or (5) provides for payments of benefits under this chapter, the responsibility of the employer and the obligations and benefits of the employees shall be as provided in the plan or agreement or its extension or modification rather than as required under this chapter; provided ~~that~~ that:

- (1) The employer or insurer has agreed in writing with the director to pay the assessments imposed by section 392-67[-]; and
- (2) If the benefits provided by the plan or agreement or extension or modification thereof include benefits falling within the definition of “sick leave” as defined in section 398-1, any amount in excess of the minimum statutory equivalent, as determined by the department, may be used for the purposes of chapter 398.”

## 2. By amending subsection (d) to read:

“(d) As used in subsection (a)(4) or (5), “benefits at least as favorable as the disability benefits required by this chapter” means the temporary disability benefits under any plan or agreement, in whole or in part, whose component parts (waiting period for illness, waiting period for accident, duration of benefits, and percentage of wage loss replaced) add in total to cash benefits or wages ~~[which]~~ that are determined by the director to be at least as favorable as the disability benefits required by this chapter. The insurance commissioner shall establish a set of tables showing the relative value of different types of cash benefits and wages to assist the director in determining whether the cash benefits and wages under a plan are at least as favorable as the temporary disability benefits required by this chapter.”

SECTION 2. Section 398-1, Hawaii Revised Statutes, is amended by amending the definition of “sick leave” to read as follows:

““Sick leave” ~~[means]:~~

(1) Means accrued increments of compensated leave provided by an employer to an employee for use by the employee for any of the following reasons:

~~[(1)]~~ (A) The employee is physically or mentally unable to perform the employee’s duties due to illness, injury, or a medical condition of the employee;

~~[(2)]~~ (B) The absence is for the purpose of obtaining professional diagnosis or treatment for a medical condition of the employee; or

~~[(3)]~~ (C) The absence is for other medical reasons of the employee, such as pregnancy or obtaining a physical examination[-]; and

~~[“Sick leave” shall]~~

(2) Shall not include ~~[any benefit provided under an employee welfare benefit plan subject to the federal Employee Retirement Income Security Act of 1974 and shall not include]~~ any insurance benefit, workers’ compensation benefit, unemployment compensation due to illness or disability [benefit], or temporary disability insurance benefit[-; or benefit not payable from the employer].”

SECTION 3. Section 398-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) An employer who provides sick leave for employees shall permit an employee to use the employee’s accrued and available sick leave for purposes of this chapter; provided that an employee shall not use more than ten days per year for this purpose, unless an express provision of a valid collective bargaining agreement authorizes the use of more than ten days of sick leave for family leave purposes. Nothing in this section shall require an employer to diminish an employee’s accrued and available sick leave below the amount required pursuant to section 392-41[-]; provided that any sick leave in excess of the minimum statutory equivalent for temporary disability benefits as determined by the department may be used for purposes of this chapter.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Became law on July 12, 2005, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

A Bill for an Act Relating to Family Court.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 571, Hawaii Revised Statutes, is amended by adding a new section to part V to be appropriately designated and to read as follows:

**“§571- Parenting plans.** (a) For every action that includes a contested custody of children, both parties or both parents shall develop either a mutually agreed-upon general parenting plan or separate individually-desired parenting plan, and file the plan at the outset of the action.

(b) A parenting plan may include a general outline relating to parental responsibilities and parenting time. A general parenting plan may also allow the parents to develop a more detailed agreement on an informal basis.

(c) A detailed parenting plan may include, but is not limited to, provisions relating to:

- (1) Residential schedule;
  - (2) Holiday, birthday, and vacation planning;
  - (3) Parental decision-making and responsibility;
  - (4) Breastfeeding, if applicable;
  - (5) Information sharing and access;
  - (6) Relocation of parents;
  - (7) Telephone access and other means of communication;
  - (8) Right of first refusal procedures;
  - (9) Transportation; and
  - (10) Methods for changing or enforcing the parenting plan and for resolving disputes.
- (d) If the parties cannot agree on a parenting plan, the court may:
- (1) Order the parties to participate in alternative dispute resolution and in counseling with a person with professional experience in child custody or parenting issues, or with other appropriate education, unless there is a finding of family violence; and
  - (2) Develop and file a detailed parenting plan when requested by either of the parties or parents.
- (e) The court or the parties may revise and amend the parenting plan from time to time.”

SECTION 2. Section 571-46, Hawaii Revised Statutes, is amended to read as follows:

**“§571-46 Criteria and procedure in awarding custody and visitation.** In the actions for divorce, separation, annulment, separate maintenance, or any other proceeding where there is at issue a dispute as to the custody of a minor child, the court, during the pendency of the action, at the final hearing, or any time during the minority of the child, may make an order for the custody of the minor child as may seem necessary or proper. In awarding the custody, the court shall be guided by the following standards, considerations, and procedures:

- (1) Custody should be awarded to either parent or to both parents according to the best interests of the child[;], and the court may also consider the importance of frequent, continuing, and meaningful contact of each parent with the child unless the court finds that a parent is unable to act in the best interest of the child;

- (2) Custody may be awarded to persons other than the father or mother whenever the award serves the best interest of the child. Any person who has had de facto custody of the child in a stable and wholesome home and is a fit and proper person shall be entitled prima facie to an award of custody;
- (3) If a child is of sufficient age and capacity to reason, so as to form an intelligent preference, the child's wishes as to custody shall be considered and be given due weight by the court;
- (4) Whenever good cause appears therefor, the court may require an investigation and report concerning the care, welfare, and custody of any minor child of the parties. When so directed by the court, investigators or professional personnel attached to or assisting the court shall make investigations and reports which shall be made available to all interested parties and counsel before hearing, and the reports may be received in evidence if no objection is made and, if objection is made, may be received in evidence; provided the person or persons responsible for the report are available for cross-examination as to any matter that has been investigated;
- (5) The court may hear the testimony of any person or expert, produced by any party or upon the court's own motion, whose skill, insight, knowledge, or experience is such that the person's or expert's testimony is relevant to a just and reasonable determination of what is for the best physical, mental, moral, and spiritual well-being of the child whose custody is at issue;
- (6) Any custody award shall be subject to modification or change whenever the best interests of the child require or justify the modification or change and, wherever practicable, the same person who made the original order shall hear the motion or petition for modification of the prior award;
- (7) Reasonable visitation rights shall be awarded to parents, grandparents, siblings, and any person interested in the welfare of the child in the discretion of the court, unless it is shown that rights of visitation are detrimental to the best interests of the child;
- (8) The court may appoint a guardian ad litem to represent the interests of the child and may assess the reasonable fees and expenses of the guardian ad litem as costs of the action, payable in whole or in part by either or both parties as the circumstances may justify;
- (9) In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the court that family violence has been committed by a parent raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence. In addition to other factors that a court must consider in a proceeding in which the custody of a child or visitation by a parent is at issue, and in which the court has made a finding of family violence by a parent:
  - (A) The court shall consider as the primary factor the safety and well-being of the child and of the parent who is the victim of family violence;
  - (B) The court shall consider the perpetrator's history of causing physical harm, bodily injury, or assault or causing reasonable fear of physical harm, bodily injury, or assault to another person; and
  - (C) If a parent is absent or relocates because of an act of family violence by the other parent, the absence or relocation shall not

- be a factor that weighs against the parent in determining custody or visitation;
- (10) A court may award visitation to a parent who committed family violence only if the court finds that adequate provision can be made for the physical safety and psychological well-being of the child and for the safety of the parent who is a victim of family violence;
  - (11) In a visitation order, a court may:
    - (A) Order an exchange of a child to occur in a protected setting;
    - (B) Order visitation supervised by another person or agency;
    - (C) Order the perpetrator of family violence to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators or other designated counseling as a condition of the visitation;
    - (D) Order the perpetrator of family violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for twenty-four hours preceding the visitation;
    - (E) Order the perpetrator of family violence to pay a fee to defray the costs of supervised visitation;
    - (F) Prohibit overnight visitation;
    - (G) Require a bond from the perpetrator of family violence for the return and safety of the child. In determining the amount of the bond, the court shall consider the financial circumstances of the perpetrator of family violence;
    - (H) Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of family violence, or other family or household member; and
    - (I) Order the address of the child and the victim to be kept confidential;
  - (12) The court may refer but shall not order an adult who is a victim of family violence to attend, either individually or with the perpetrator of the family violence, counseling relating to the victim's status or behavior as a victim as a condition of receiving custody of a child or as a condition of visitation;
  - (13) If a court allows a family or household member to supervise visitation, the court shall establish conditions to be followed during visitation; and
  - (14) A supervised visitation center must provide: a secure setting and specialized procedures for supervised visitation and the transfer of children for visitation and supervision by a person trained in security and the avoidance of family violence."

SECTION 3. Section 571-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"“Meaningful contact” means parent and child interactions, activities, and experiences, performed together, which nurture the parent-child attachment and relationship, while contributing to the child’s development in a positive and effective manner.”

SECTION 4. Section 571-46.1, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) For the purposes of this section, “joint custody” means an order awarding legal custody of the minor child or children to both parents and providing that physical custody shall be shared by the parents, pursuant to a parenting plan developed pursuant to section 571-\_\_\_, in such a way as to assure the child or children



of frequent, continuing, and meaningful contact with both parents; provided, however, that such order may award joint legal custody without awarding joint physical custody.’’

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect upon its approval.

(Became law on July 12, 2005, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 245**

H.B. NO. 1608

A Bill for an Act Relating to Voluntary Employees’ Beneficiary Association Trusts.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to allow for the temporary establishment of an employee organization sponsored trust that would provide health benefits for state and county employees of a particular bargaining unit, as well as future retirees of that bargaining unit and existing retirees who wish to participate in such a trust. The trust would be established as a voluntary employees’ beneficiary association (VEBA) trust pursuant to section 501(c)(9) of the Internal Revenue Code of 1986, as amended. The trust would be funded by employer contributions negotiated pursuant to a collective bargaining agreement and employee contributions to be determined by the trust’s board of trustees for active employees. The Act imposes on the trust all of the standards and requirements of the Employee Retirement Income Security Act of 1974, as amended (ERISA). Even if the trust is deemed to be a governmental plan exempt from ERISA, the legislative intent is that the trust must comply with the standards and requirements of ERISA as a matter of state law and that such shall be enforced by the attorney general as well as participants, beneficiaries, and fiduciaries of the plan or plans established by the trust.

This Act also provides for retiree coverage for any employee who retires from the State or the counties who was a member of an employee organization that establishes a VEBA trust pursuant to a collective bargaining agreement effective on or after July 1, 2005. Existing retirees who are members of an employee organization and who were previously covered by a collective bargaining agreement will be provided a one-time opportunity to join the VEBA trust once established. Retiree coverage for existing retirees provided by an employee organization’s VEBA trust would be funded by employer contributions made directly to the VEBA trust by the employer.

The requirement of establishing a VEBA trust in order to be exempt from participation in the Hawaii employer-union health benefits trust fund is intended to be a cost containment measure in response to the ever-increasing costs of health care throughout the state. However, because of the lack of data available on the impact of a VEBA trust on the Hawaii employer-union health benefits trust fund, this Act would allow the establishment of a VEBA trust pilot program for a period of three years. During this period, a thorough analysis of the costs and benefits of a VEBA trust can be evaluated against the Hawaii employer-union health benefits trust fund

to determine what actual savings could be realized by the State through this mechanism.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
VOLUNTARY EMPLOYEES’ BENEFICIARY ASSOCIATION TRUSTS**

§ -1 **Definitions.** As used in this chapter:

“Beneficiary” means a person designated by a participant, or by the terms of an employee welfare benefit plan, who is or may become entitled to a benefit thereunder.

“Collective bargaining agreement” means the formal written agreement over wages, hours, amounts of contributions by the State and counties to a trust established under this chapter, and other terms and conditions of employment, entered into between an employer and the exclusive representatives of the employees of the employer.

“Contribution” means money payments made to the trust by the State, counties, or a state or county employee.

“Employee” or “public employee” means any person employed by a public employer except elected and appointed officials and other employees excluded from coverage in section 89-6(g).

“Employee organization” means the employee organization as defined in section 89-2.

“Employee welfare benefit plan” or “plan” shall mean any plan, fund, or program which is established by the trust for the purpose of providing participants or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, or death.

“Employer” or “public employer” means “employer” or “public employer” as defined in section 89-2.

“Exclusive representative” means “exclusive representative” as defined in section 89-2.

“Fiduciary” means any person, with respect to a plan, to the extent that such person:

- (1) Exercises any discretionary authority or discretionary control respecting management of such plan or exercises authority or control respecting management or disposition of its assets;
- (2) Renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has authority or responsibility to do so; or
- (3) Has any discretionary authority or discretionary responsibility in the administration of such plan.

Without limiting the foregoing, “fiduciary” shall include each trustee of the trust.

“Participant” means any employee or retiree who is a member of the trust and is eligible to receive benefits under an employee welfare benefit plan provided by or through the trust.

“Party in interest” means:

- (1) Any fiduciary, counsel, or employee of the trust;
- (2) A person providing services to the trust or its plans;
- (3) An employer, any of whose employees are covered by such plans; and
- (4) An employee organization, any of whose members are covered by the trust’s plans.

“Retiree” means an individual who has retired from the State or its counties.

“Trust” means a voluntary employees’ beneficiary association trust established under this chapter.

**§ -2 Establishment of the trust.** (a) An employee organization shall be exempt from chapter 87A and meet the following requirements in order to establish a voluntary employees’ beneficiary association trust under this chapter:

- (1) The employee organization shall establish a tax-exempt trust pursuant to Title 26 United States Code section 501(c)(9), as amended, and related regulations, known as a voluntary employees’ beneficiary association trust;
- (2) The trust may offer health benefits in accordance with Title 26 United States Code section 501(c)(9), as amended, and related regulations;
- (3) The trust shall meet all the standards and requirements applicable to employee welfare benefit plans under Title 29 United States Code sections 1001-1191, as amended, and related regulations. The assets of any plan provided by or through the trust shall not inure to the benefit of any employee organization and shall be held for the exclusive purposes of providing benefits to participants and beneficiaries and defraying reasonable expenses of administration; provided that this shall not preclude the trust from returning contributions or payments made by an employer under a mistake of fact within one year after the payment of the contributions or payments;
- (4) Each plan offered by the trust shall be established and maintained pursuant to a written instrument that:
  - (A) Provides a procedure for establishing and carrying out a funding policy and method consistent with the objectives of the plan and the requirements of this chapter;
  - (B) Describes any procedure under the plan for the allocation of responsibilities for the operation and administration of the plan;
  - (C) Provides a procedure for amending the plan;
  - (D) Specifies the basis on which payments are made to and from the plan; and
  - (E) Provides a procedure for providing adequate notice in writing to any participant or beneficiary whose claim for benefits has been denied, setting forth the specific reasons for such denial, and affording a reasonable opportunity for any participant whose claim has been denied for a full and fair review. The written instrument shall meet any other standards and requirements of Title 29 United States Code section 1001-1191, as amended, and related regulations;
- (5) The trust shall provide a summary plan description, material modifications or amendments to the summary plan description, and updates to the summary plan description that meet the standards and requirements of this chapter;
- (6) All of the assets of the trust’s plans shall be held in trust by the governing board of the trust, at least one member of which shall be a retiree and a member of the employee organization sponsoring the trust.
- (7) The governing board of the trust shall hold regularly scheduled meetings open to all participants and beneficiaries and shall provide such persons with advance notice of all meetings; and
- (8) The employee organization shall have an applicable collective bargaining agreement with the employer; provided that the agreement

shall specify that the employee organization agrees to comply with all requirements of this chapter without regard to whether or not the trust is deemed a governmental plan under federal law.

**§ -3 Summary plan description.** (a) Each summary plan description provided under this chapter shall be written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise participants and beneficiaries of their rights and obligations under the plan. A summary of any material modification in the terms of the plan shall be written in a manner calculated to be understood by the average participant.

(b) The summary plan description shall contain the following information:

- (1) The name and type of administration of the plan;
- (2) In the case of a group health plan, whether a health insurance issuer is responsible for the financing or administration (including payment of claims) of the plan and if so, the name and address of such issuer;
- (3) The name and address of the person designated as agent for the service of legal process, if such person is not the administrator;
- (4) The name and address of the administrator;
- (5) The names, titles, and addresses of any trustee or trustees;
- (6) A description of the relevant provisions of any applicable collective bargaining agreement;
- (7) The plan's requirements respecting eligibility for participation and benefits;
- (8) Circumstances that may result in disqualification, ineligibility, or denial or loss of benefits;
- (9) The source of financing of the plan and the identity of any organization through which benefits are provided;
- (10) The date of the end of the plan year and whether records of the plan are kept on a calendar, policy, or fiscal year basis; and
- (11) The procedures to be followed in presenting claims for benefits under the plan and the remedies available under the plan procedures.

The summary plan description shall contain any other information required under Title 29 United States Code sections 1001-1191, as amended, and related regulations.

**§ -4 Annual report.** (a) The trust shall publish an annual report with respect to every employee welfare benefit plan to which this chapter applies. The report shall be filed with the department of accounting and general services and the respective departments of the counties as their interests may appear.

(b) The annual report shall contain the following:

- (1) The number of employees, retirees, and other persons covered by the plan;
- (2) The name and address of each fiduciary;
- (3) Except in the case of a person whose compensation is minimal and who performs solely ministerial duties, the name of each person (including but not limited to any consultant, broker, trustee, accountant, insurance carrier, actuary, administrator, investment manager, or custodian who rendered services to the plan or who had transactions with the plan) who received directly or indirectly compensation from the plan during the preceding plan year for services rendered to the plan or its participants, the amount of such compensation, the nature of the person's services to the plan or its participants, the person's relationship to the employee organization, and any other office, position, or employment that the person holds with a party in interest;

- (4) An explanation of the reason for any change in appointment of any trustee, accountant, insurance carrier, enrolled actuary, administrator, investment manager, or custodian; and
  - (5) A financial statement that meets the requirements of this chapter. The annual report shall contain any other information required by Title 29 United States Code sections 1001-1191, as amended, and related regulations.
- (c) The financial statement of the annual report shall contain the following information with respect to an employee welfare benefit plan:
- (1) A statement of assets and liabilities;
  - (2) A statement of changes in fund balance;
  - (3) A statement of changes in financial position;
  - (4) A statement of receipts and disbursements during the preceding twelve-month period;
  - (5) A schedule of all assets held for investment purposes;
  - (6) A schedule of each transaction involving a person known to be a party in interest;
  - (7) A schedule of all loans or fixed income obligations which were in default as of the close of the plan's fiscal year or were classified during the year as uncollectible;
  - (8) A list of all leases that were in default or were classified during the year as uncollectible;
  - (9) If some or all of the assets of the plan or plans are held in a common or collective trust maintained by a bank or similar institution or in a separate account maintained by an insurance carrier or a separate trust maintained by an insurance carrier or a separate trust maintained by a bank as trustee, the most recent annual statement of assets and liabilities of such common or collective trust, and in the case of a separate account or a separate trust, such other information as is required by the administrator in order to comply with this chapter; and
  - (10) A schedule of each reportable transaction.

The financial statement shall contain any other information required under Title 29 United States Code sections 1001-1191, as amended, and regulated regulations.

**§ -5 Filing and furnishing of information requirements.** (a) Once established, the trust shall comply with all the form and report filing requirements imposed on the trust by the Internal Revenue Service and Title 29 United States Code sections 1001-1191, as amended, and regulated regulations.

(b) Within two hundred ten days of the closing of each plan year, the trust shall provide an annual report for each employee welfare benefit plan covered by this chapter to the department of accounting and general services and the respective departments of the counties as their interests may appear. The annual reports shall be government records open to public inspection.

(c) The trust shall provide summary plan descriptions to each participant and beneficiary of each employee welfare benefit plan covered by this chapter within ninety days of a participant becoming enrolled in a plan or within ninety days of a beneficiary first receiving benefits under a plan. No less than every fifth year after a plan is established, the trust shall provide updated summary plan descriptions to each participant and beneficiary. If a material modification or amendment is made to a plan, the trust shall provide a summary description of such modification or amendment to each participant or beneficiary within two hundred ten days after the plan year in which the modification or amendment is made.

(d) Upon request of any participant or beneficiary, the trust shall provide such person with the latest updated summary plan description, the latest annual

report, the applicable collective bargaining agreement, the trust agreement, and any other instruments under which the trust and plan were established or are operated.

(e) The trust shall file a copy of all documents referenced in subsections (a) and (c) with the department of human resources development and the respective departments of the counties as their interests may appear.

**§ -6 Fiduciary duties; prohibited transactions.** (a) A fiduciary of the trust shall with respect to a plan comply with all fiduciary duties imposed on fiduciaries under Title 29 United States Code sections 1001-1191, as amended, and regulated regulations.

(b) All fiduciaries of the trust shall discharge their duties with respect to a plan solely in the interest of the participants and beneficiaries and:

- (1) For the exclusive purpose of:
  - (A) Providing benefits to participants and their beneficiaries; and
  - (B) Defraying reasonable expenses of administering the plan;
- (2) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a similar capacity and familiar with those matters would use in the conduct of an enterprise of a similar character and with like aims;
- (3) By diversifying the investments of the plan so as to minimize the risk of large losses, unless, under the circumstances, it is clearly prudent not to do so; and
- (4) In accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this chapter.

(c) In addition to any liability that a fiduciary may have under this chapter, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:

- (1) If the fiduciary participates knowingly in, or knowingly undertakes to conceal, an act or omission of the other fiduciary, knowing that act or omission is a breach;
- (2) If, by the fiduciary's failure to comply with subsection (a) or (b), the fiduciary has been enabled such other fiduciary to commit breach; or
- (3) If the fiduciary has knowledge of the breach by such other fiduciary, unless the fiduciary makes reasonable efforts under the circumstances to remedy the breach.

If the assets of the plan are held by two or more trustees, each shall use reasonable care to prevent a co-trustee from committing a breach, and each shall be responsible for jointly managing and controlling the assets of the plan.

(d) A fiduciary shall not cause a plan to engage in a transaction, if the fiduciary knows or should know that the transaction constitutes a direct or indirect:

- (1) Sale or exchange, or leasing, of any property between the plan and a party in interest;
- (2) Lending of money or other extension of credit between the plan and a party in interest;
- (3) Furnishing of goods, services, or facilities between the plan and a party in interest; or
- (4) Transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan.

(e) A fiduciary shall not:

- (1) Deal with the assets of the plan in the fiduciary's own interest or for the fiduciary's own account;
- (2) In the fiduciary's individual capacity or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party)

whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries; or

- (3) Receive any consideration for the fiduciary's own personal account from any party dealing with the plan in connection with a transaction involving the assets of the plan.

**§ -7 Liability for breach of fiduciary duty.** (a) Any person who is a fiduciary with respect to a plan and who breaches any of the responsibilities, obligations, or duties imposed on fiduciaries by this chapter shall be personally liable to make good to the plan any losses to the plan resulting from each breach, and to restore to the plan any profits of the fiduciary that have been made through the use of assets of the plan by the fiduciary, and shall be subject to any other equitable and remedial relief as the court may deem appropriate, including removal of the fiduciary.

(b) Any provision in any agreement or instrument that purports to relieve a fiduciary of responsibility or liability for any responsibility, obligation, or duty under this chapter shall be void as against public policy. However, nothing in this section shall preclude:

- (1) A plan from purchasing insurance for its fiduciaries or for itself to cover liability or losses occurring by reason of the act or omission of a fiduciary in the case of a breach of a fiduciary obligation by the fiduciary, if the insurance permits recourse by the insurer against the fiduciary in the case of a breach of fiduciary obligation by the fiduciary;
- (2) A fiduciary from purchasing insurance to cover liability under this chapter from and for the fiduciary's own account; or
- (3) An employee organization from purchasing insurance to cover potential liability of one or more persons who serve in a fiduciary capacity with regard to an employee welfare benefit plan.

**§ -8 State and county contributions to the trust; active employees.** Upon the establishment of a voluntary employees' beneficiary association trust, the State, through the department of budget and finance, the counties through their respective departments of finance, shall pay to the trust a monthly contribution equal to the amount specified in the applicable public sector collective bargaining agreement from July 1, 2005, and thereafter.

**§ -9 State and county contributions to the trust; retired employees.** (a) Any individual who becomes a retiree on or after the establishment of a voluntary employees' beneficiary association trust, and who, immediately prior to retirement, was a member of the bargaining unit of the sponsoring employee organization, shall be enrolled in that voluntary employees' beneficiary association trust. Upon the establishment of a voluntary employees' beneficiary association trust, the State, through the department of budget and finance, and the counties through their respective departments of finance, shall pay to the trust for each retiree who retires on or after July 1, 2005, a monthly contribution pursuant to the applicable collective bargaining agreement that shall not exceed the base monthly contributions or the specific contribution limits set forth in chapter 87A.

(b) Any retiree who, immediately prior to retirement, was a member of an employee organization prior to the establishment of a voluntary employees' beneficiary association trust by the employee organization, and who was previously covered by a collective bargaining agreement, shall be given a one-time option to transfer participation from the Hawaii employer-union health benefits trust fund established under chapter 87A to the organization's voluntary employees' beneficiary association trust once the latter is established. Upon the establishment of the voluntary employees' beneficiary association trust, the State, through the depart-

ment of budget and finance and the counties, through their respective departments of finance, shall pay to the trust for each retiree who opts to transfer into a voluntary employees' beneficiary association trust, a monthly contribution equal to the contribution paid on behalf of a similarly situated retiree under the Hawaii employer-union health benefits trust fund.

(c) Medicare part B reimbursements established pursuant to section 87A-23(2) shall be directly disbursed by the State, through the department of budget and finance, and the counties, through their respective departments of finance, to those retirees and their beneficiaries who qualify and are covered by a voluntary employees' beneficiary association trust to the same extent retirees and their beneficiaries under the Hawaii employer-union health benefits trust fund receive those reimbursements.

(d) For the purposes of this chapter, a collective bargaining agreement shall include provisions specifying contributions to a voluntary employees' beneficiary association trust.

**§ -10 Termination of the trust.** If an employee organization or a collective bargaining agreement that establishes a voluntary employees' beneficiary association trust terminates the voluntary employees' beneficiary association trust, or ceases to provide health benefits, the participants in the trust shall be allowed to return to the Hawaii employer-union health benefits trust fund upon the date that health benefits cease to be provided. All participants electing to return to the Hawaii employer-union health benefits trust fund shall be given the same rights and benefits as if the participant had first participated in the Hawaii employer-union health benefits trust fund from the inception of that trust fund without loss of benefits or accrued time.

**§ -11 Violation of the chapter; enforcement.** (a) A civil action may be brought by a participant, beneficiary, or fiduciary:

- (1) For relief, if a trust fails to provide any information required under this chapter, or if a trust fails to comply with any request for information that the trust is required to furnish to the participant or beneficiary;
  - (2) To recover benefits due the participant or beneficiary under the terms of the plan, or to enforce the participant's or beneficiary's rights under the terms of the plan, or to clarify the participant's or beneficiary's rights to future benefits under the terms of the plan;
  - (3) For appropriate relief against any breach of fiduciary duty under section -7; or
  - (4) To enjoin any act or practice that violates any provision of this chapter or the terms of the plan, or to obtain any other appropriate equitable relief, or to redress such violations, or to enforce any provisions of this chapter or the terms of the plan.
- (b) A civil action may be brought by the attorney general:
- (1) For relief, if a trust fails to provide any information required by this chapter, or if a trust fails to comply with any request for information that the trust is required to furnish any state or county department;
  - (2) To enjoin any act or practice that violates any provision of this chapter;
  - (3) To redress the violations;
  - (4) To enforce any provision of this chapter; or
  - (5) To suspend contributions from the State and counties made pursuant to a collective bargaining agreement required under section -2(a)(8) made to any trust established under this chapter.

(c) The attorney general shall have the power, in order to determine whether any person has violated or is about to violate any provision of this chapter:



- (1) To conduct an investigation and in connection therewith to require submission of reports, books, and records, and the filing of data in support of any information required to be filed under this chapter; and
- (2) To enter any place, inspect any books and records, and question any persons as the attorney general may deem necessary to enable the attorney general to determine the facts relative to an investigation.

For purposes of any investigation provided for in this chapter, the attorney general may utilize the investigation procedures set forth in section 480-18 and the remedies and penalties of that section are hereby made applicable.

(d) The rights and remedies provided in this section are in addition to any rights or remedies that the participants, beneficiaries, fiduciaries, attorney general, or other state or federal agencies may have over the trust, the plans provided by or through the trust, and fiduciaries of the plans.

**§ -12 Insurance; immunity of State and counties.** (a) The employee organization or the trust's governing board shall procure:

- (1) Fiduciary liability insurance and errors and omissions coverage for members of the governing board; and
- (2) A fidelity bond of a reasonable amount for the chairperson of the governing board and any other person authorized to handle trust moneys.

(b) Notwithstanding any law to the contrary, the State and the counties, and their officers, agents, and employees, shall not be liable for any benefits provided by a trust or which it fails to provide, any losses suffered by a trust, and any losses, damages, or penalties arising out of the operations of a trust or the acts or omissions of a trust's governing board or any fiduciary of a trust."

SECTION 3. Section 89-2, Hawaii Revised Statutes, is amended by amending the definitions of "employee" or "public employee" and "employee organization" to read as follows:

"'Employee' or 'public employee' means any person employed by a public employer, except elected and appointed officials and other employees who are excluded from coverage in section ~~[[89-6(f)]]~~ 89-6(g).

"Employee organization" means any organization of any kind in which public employees participate and which exists for the primary purpose of dealing with public employers concerning grievances, labor disputes, wages, hours, amounts of contributions by the State and counties to the Hawaii ~~[public employees health]~~ employer-union health benefits trust fund[,] or a voluntary employees' beneficiary association trust, and other terms and conditions of employment of public employees."

SECTION 4. Section 89-3, Hawaii Revised Statutes, is amended to read as follows:

"**§89-3 Rights of employees.** Employees shall have the right of self-organization and the right to form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment, including retiree health benefit contributions, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion. An employee shall have the right to refrain from any or all of such activities, except for having a payroll deduction equivalent to regular dues remitted to an exclusive representative as provided in section 89-4."

SECTION 5. Section 89-6, Hawaii Revised Statutes, is amended to read as follows:

**“§89-6 Appropriate bargaining units.** (a) All employees throughout the State within any of the following categories shall constitute an appropriate bargaining unit:

- (1) Nonsupervisory employees in blue collar positions;
- (2) Supervisory employees in blue collar positions;
- (3) Nonsupervisory employees in white collar positions;
- (4) Supervisory employees in white collar positions;
- (5) Teachers and other personnel of the department of education under the same pay schedule, including part-time employees working less than twenty hours a week who are equal to one-half of a full-time equivalent;
- (6) Educational officers and other personnel of the department of education under the same pay schedule;
- (7) Faculty of the University of Hawaii and the community college system;
- (8) Personnel of the University of Hawaii and the community college system, other than faculty;
- (9) Registered professional nurses;
- (10) Institutional, health, and correctional workers;
- (11) Firefighters;
- (12) Police officers; and
- (13) Professional and scientific employees, who cannot be included in any of the other bargaining units.

(b) Because of the nature of the work involved and the essentiality of certain occupations that require specialized training, supervisory employees who are eligible for inclusion in bargaining units (9) through (13) shall be included in bargaining units (9) through (13), respectively, instead of bargaining unit (2) or (4).

(c) The classification systems of each jurisdiction shall be the bases for differentiating blue collar from white collar employees, professional from institutional, health and correctional workers, supervisory from nonsupervisory employees, teachers from educational officers, and faculty from nonfaculty. In differentiating supervisory from nonsupervisory employees, class titles alone shall not be the basis for determination. The nature of the work, including whether a major portion of the working time of a supervisory employee is spent as part of a crew or team with nonsupervisory employees, shall be considered also.

(d) For the purpose of negotiating a collective bargaining agreement, the public employer of an appropriate bargaining unit shall mean the governor together with the following employers:

- (1) For bargaining units (1), (2), (3), (4), (9), (10), and (13), the governor shall have six votes and the mayors, the chief justice, and the Hawaii health systems corporation board shall each have one vote if they have employees in the particular bargaining unit;
- (2) For bargaining units (11) and (12), the governor shall have four votes and the mayors shall each have one vote;
- (3) For bargaining units (5) and (6), the governor shall have three votes, the board of education shall have two votes, and the superintendent of education shall have one vote;
- (4) For bargaining units (7) and (8), the governor shall have three votes, the board of regents of the University of Hawaii shall have two votes, and the president of the University of Hawaii shall have one vote.

Any decision to be reached by the applicable employer group shall be on the basis of simple majority, except when a bargaining unit includes county employees from

more than one county. In such case, the simple majority shall include at least one county.

(e) In addition to a collective bargaining agreement under subsection (d), each employer may negotiate, independently of one another, supplemental agreements that apply to their respective employees; provided that any supplemental agreement reached between the employer and the exclusive representative shall not extend beyond the term of the applicable collective bargaining agreement and shall not require ratification by employees in the bargaining unit.

(f) For the purposes of negotiating contributions by the State and the counties to a voluntary employees' beneficiary association trust as part of a collective bargaining agreement, all prospective retirees who retire on or after July 1, 2005, shall be considered members of the bargaining unit to which they belonged immediately prior to their retirement from the State or the counties.

~~[(f)]~~ (g) The following individuals shall not be included in any appropriate bargaining unit or be entitled to coverage under this chapter:

- (1) Elected or appointed official;
- (2) Member of any board or commission;
- (3) Top-level managerial and administrative personnel, including the department head, deputy or assistant to a department head, administrative officer, director, or chief of a state or county agency or major division, and legal counsel;
- (4) Secretary to top-level managerial and administrative personnel under paragraph (3);
- (5) Individual concerned with confidential matters affecting employee-employer relations;
- (6) Part-time employee working less than twenty hours per week, except part-time employees included in bargaining unit (5);
- (7) Temporary employee of three months' duration or less;
- (8) Employee of the executive office of the governor or a household employee at Washington Place;
- (9) Employee of the executive office of the lieutenant governor;
- (10) Employee of the executive office of the mayor;
- (11) Staff of the legislative branch of the State;
- (12) Staff of the legislative branches of the counties, except employees of the clerks' offices of the counties;
- (13) Any commissioned and enlisted personnel of the Hawaii national guard;
- (14) Inmate, kokua, patient, ward, or student of a state institution;
- (15) Student help;
- (16) Staff of the Hawaii labor relations board; or
- (17) ~~[Employees]~~ Employee of the Hawaii national guard youth challenge academy.

~~[(g)]~~ (h) Where any controversy arises under this section, the board ~~[shall]~~, pursuant to chapter 91, shall make an investigation and, after a hearing upon due notice, make a final determination on the applicability of this section to specific individuals, employees, or positions.”

SECTION 6. Section 89-9, Hawaii Revised Statutes, is amended as follows:  
1. By amending subsection (a) to read:

“(a) The employer and the exclusive representative shall meet at reasonable times, including meetings sufficiently in advance of the February 1 impasse date under section 89-11, and shall negotiate in good faith with respect to wages, hours, the amounts of contributions by the State and respective counties to the Hawaii

employer-union health benefits trust fund or a voluntary employees' beneficiary association trust to the extent allowed in subsection (e), and other terms and conditions of employment [which] that are subject to collective bargaining and [which] that are to be embodied in a written agreement as specified in section 89-10, but [such] the obligation does not compel either party to agree to a proposal or make a concession; provided that the parties may not negotiate with respect to cost items as defined by section 89-2 for the biennium 1999 to 2001, and the cost items of employees in bargaining units under section 89-6 in effect on June 30, 1999, shall remain in effect until July 1, 2001."

2. By amending subsections (d) and (e) to read as follows:

"(d) Excluded from the subjects of negotiations are matters of classification, reclassification, benefits of but not contributions to the Hawaii employer-union health benefits trust fund[;] or a voluntary employees' beneficiary association trust; recruitment[;]; examination[;]; initial pricing[;]; and retirement benefits except as provided in section 88-8(h). The employer and the exclusive representative shall not agree to any proposal [which] that would be inconsistent with the merit principle or the principle of equal pay for equal work pursuant to section 76-1 or [which] that would interfere with the rights and obligations of a public employer to:

- (1) Direct employees;
- (2) Determine qualifications, standards for work, and the nature and contents of examinations;
- (3) Hire, promote, transfer, assign, and retain employees in positions;
- (4) Suspend, demote, discharge, or take other disciplinary action against employees for proper cause;
- (5) Relieve an employee from duties because of lack of work or other legitimate reason;
- (6) Maintain efficiency and productivity, including maximizing the use of advanced technology, in government operations;
- (7) Determine methods, means, and personnel by which the employer's operations are to be conducted; and
- (8) Take such actions as may be necessary to carry out the missions of the employer in cases of emergencies.

The employer and the exclusive representative may negotiate procedures governing the promotion and transfer of employees to positions within a bargaining unit; the suspension, demotion, discharge, or other disciplinary actions taken against employees within the bargaining unit; and the layoff of employees within the bargaining unit. Violations of the procedures so negotiated may be subject to the grievance procedure in the collective bargaining agreement.

(e) Negotiations relating to contributions to the Hawaii employer-union health benefits trust fund or a voluntary employees' beneficiary association trust shall be for the purpose of agreeing upon the amounts [which] that the State and counties shall contribute under [section 87-4,] sections 87A-32 through 87A-37, toward the payment of the costs for a health benefits plan, as defined in section [87-1(8),] 87A-1 and group life insurance benefits, and the parties shall not be bound by the amounts contributed under prior agreements; provided that section 89-11 for the resolution of disputes by way of arbitration shall not be available to resolve impasses or disputes relating to the amounts the State and counties shall contribute to the Hawaii employer-union health benefits trust fund[;] or a voluntary employees' beneficiary association trust established under chapter \_\_\_\_\_."

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval, for the purpose of establishing a voluntary employees beneficiary association trust pilot program and shall be repealed on July 1, 2008; provided that sections 89-2, 89-3, 89-6, and 89-9, Hawaii Revised Statutes, are reenacted in the form in which they read on the day before the effective date of this Act.

(Became law on July 12, 2005, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 246

S.B. NO. 1814

A Bill for an Act Relating to Impact Fees.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. As residential development continues to proceed in the State of Hawaii at a steady pace to accommodate the growth of kamaaina families and the influx of newcomers, it becomes increasingly important that adequate infrastructure be developed to service this new construction. While this includes such obvious elements as roads, water, sewage, telephone, cable television and internet, and electricity, it also includes what is arguably the most important element, especially as regards the future – school facilities.

To date, fair share contributions have been collected by the department of education from individual development firms to defray a portion of the costs their new developments will have on the department of education. These resources, often in the form of cash and donated real estate, have traditionally been used to either improve and expand existing school facilities or to build altogether new facilities.

Both parties, the department of education (DOE) and the development community, would like to achieve a greater level of predictability to these arrangements. To this end, several impact fee measures were introduced during the 2004 and 2005 legislative sessions. It is the consensus of the stakeholders at this time, however, that more information needs to be gathered and more planning done to arrive at an equitable solution satisfactory to all concerned parties.

In 2001, the local planning organization Group 70, Inc. and Duncan Associates prepared a report entitled "School Fair Share Contribution Study" which examined the existing department of education practice of assessing fair share contributions. Another report completed in 1992 entitled "Impact Fees in Hawaii: Implementing the State Law", provided some insight into the use of impact fees for public facilities. These reports can serve as a basis upon which to build; however, they both need to be updated and in certain instances expanded.

The purpose of this Act is to establish a school impact fee working group to prepare the scope of work for:

- (1) An updated overview of alternative financing methods for construction of new and expanding existing educational facilities, including analysis of how school districts accommodate growth in student population and redistribution of student population;
- (2) A needs assessment study using Central Oahu as the case study; and
- (3) Development of specific recommendations, based on the research and needs assessment, to implement methods for financing new or expanding existing department of education educational facilities, which may include but not be limited to proposed:
  - (A) Legislation;
  - (B) County ordinances; and
  - (C) Agency and commission rules and regulations.

SECTION 2. (a) There is established a school impact fee working group (working group), which shall be administratively attached to the office of the auditor. The working group may advise the office of the auditor in the negotiation and execution of a contract or contracts with one or more consultants, for-profit and non-profit organizations, private entities, corporations, or any combination thereof to:

- (1) Facilitate the operation and administration of the working group;
- (2) Facilitate information gathering, synthesis, and dissemination among key stakeholders;
- (3) Draft meeting minutes;
- (4) Conduct research;
- (5) Draft the report to be submitted to the legislature;
- (6) Draft any proposed legislation, county ordinances, and agency and commission rules and regulations; and
- (7) Perform any other such functions as may be deemed necessary by the working group.

The auditor shall have the primary responsibility for overseeing the work of and administering the contract or contracts of any consultant or consultants hired by the working group. Chapter 103D shall not apply to any contract or contracts negotiated or executed under this Act.

(b) The working group shall be composed of:

- (1) The president of the senate or the president's designee;
- (2) The speaker of the house of representatives or the speaker's designee;
- (3) Mayor of the city and county of Honolulu or the mayor's designee;
- (4) The superintendent of education or the superintendent's designee;
- (5) The executive director of the land use commission or the executive director's designee;
- (6) The president of the Hawaii state association of counties or the president's designee;
- (7) A department of education employee or consultant whose primary area of responsibility is repair and maintenance, capital improvement projects, land use planning, or any other relevant field, to be appointed by the superintendent of education;
- (8) A principal or complex area superintendent to be appointed by the superintendent of education;
- (9) The executive director of the Land Use Research Foundation or the executive director's designee; and
- (10) One member of the development community to be designated by the executive director of the Land Use Research Foundation.

(c) The working group shall:

- (1) Examine the background of the salient issues, which shall include but not necessarily be limited to an investigation and evaluation of:
  - (A) The 2001 Group 70, Inc. and Duncan Associates report entitled "School Fair Share Contribution Study" and its relevancy today;
  - (B) The 1992 study entitled "Impact Fees in Hawaii: Implementing the State Law," and its relevancy today;
  - (C) The differing school facility infrastructure needs posed by:
    - (i) Infill and new development;
    - (ii) Condominium, duplex, detached single-family homes, and other types of construction; and
    - (iii) The varied market prices targeted by differing types of developments;
  - (D) Various funding mechanisms and other best practices utilized by other jurisdictions nation-wide;

- (E) Current practices engaged in by the department of education to assess and collect fair-share contributions and any other relevant means of resource acquisition;
  - (F) Potential means of funding, including:
    - (i) Impact fees assessed through calculations of proportionate shares of overall development costs; and
    - (ii) Any other means as may be deemed appropriate by the working group; and
  - (G) How to improve the department of education projections for future facilities to be better aligned with various county plans and priorities;
- (2) Conduct a case study, using central Oahu, on how these issues and proposals may affect a specific, contiguous geographic area that is slated for ongoing, complex, and varied development which will probably result in the need for increased department of education facility capacity. The case study shall include a "needs assessment" which shall at a minimum include the following:
- (A) Developing service and facility standards;
  - (B) Identifying and projecting needs for capital facility capacity;
  - (C) Defining current deficiencies or excess capacity in existing capital facilities;
  - (D) Separating the capital costs of new growth and development from existing capital needs;
  - (E) Estimating capital costs on a per-unit-of-demand;
  - (F) Apportioning the capital costs of new development to various types of land use;
  - (G) Calculating credits for past and future tax payments toward capital facility capacity; and
  - (H) Developing legislation, ordinances, and rules or regulations containing policies and procedures for impact fee assessment, collection, administration and appeals; and
- (3) Provide the legislature, counties, and other interested public and private entities with measurable, specific deliverables which may include but not necessarily be limited to:
- (A) New or revised statutes;
  - (B) New or revised ordinances;
  - (C) New or revised department of education procedures for consideration and possible approval by the board of education.

SECTION 3. The working group shall submit its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2006.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$150,000, or so much thereof as may be necessary for fiscal year 2005-2006, for the operation of the working group.

The sum appropriated shall be expended by the state auditor which shall oversee and administer any consultant contracts as may be executed on behalf of the working group for the purposes of this Act.

SECTION 5. This Act shall take effect on upon approval, provided that section 4 shall take effect July 1, 2005; and provided further that this Act shall be repealed on July 30, 2006.

(Became law on July 12, 2005, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

A Bill for an Act Relating to Taxation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to authorize counties to levy a county surcharge on state tax by ordinance to fund public transportation systems.

SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§46- County surcharge on state tax.** (a) Each county may establish a surcharge on state tax at the rates enumerated in sections 237- and 238- . A county electing to establish this surcharge shall do so by ordinance; provided that:

- (1) No ordinance shall be adopted until the county has conducted a public hearing on the proposed ordinance;
- (2) The ordinance shall be adopted prior to December 31, 2005; and
- (3) No county surcharge on state tax that may be authorized under this section shall be levied prior to January 1, 2007.

Notice of the public hearing required under paragraph (1) shall be published in a newspaper of general circulation within the county at least twice within a period of thirty days immediately preceding the date of the hearing.

(b) A county electing to exercise the authority granted under this section shall notify the director of taxation within ten days after the county has adopted a surcharge on state tax ordinance and, beginning no earlier than January 1, 2007, the director of taxation shall levy, assess, collect, and otherwise administer the county surcharge on state tax.

(c) Each county with a population greater than five hundred thousand that adopts a county surcharge on state tax ordinance pursuant to subsection (a) shall use the surcharges received from the State for:

- (1) Operating or capital costs of a locally preferred alternative for a mass transit project; and
- (2) Expenses in complying with the Americans with Disabilities Act of 1990 with respect to paragraph (1).

The county surcharge on state tax shall not be used to build or repair public roads or highways, bicycle paths, or support public transportation systems already in existence prior to the effective date of this Act.

(d) Each county with a population equal to or less than five hundred thousand that adopts a county surcharge on state tax ordinance pursuant to subsection (a) shall use the surcharges received from the State for:

- (1) Operating or capital costs of public transportation within each county for public transportation systems, including public roadways or highways, public buses, trains, ferries, pedestrian paths or sidewalks, or bicycle paths; and
- (2) Expenses in complying with the Americans with Disabilities Act of 1990 with respect to paragraph (1).

(e) As used in this section, “capital costs” means nonrecurring costs required to construct a transit facility or system, including debt service, costs of land acquisition and development, acquiring of rights-of-way, planning, design, and construction, and including equipping and furnishing the facility or system.”

SECTION 3. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:



**“§237- County surcharge on state tax; administration.** (a) The county surcharge on state tax, upon the adoption of county ordinances and in accordance with the requirements of section 46- , shall be levied, assessed, and collected as provided in this section on all gross proceeds and gross income taxable under this chapter. No county shall set the surcharge on state tax at a rate greater than one-half per cent of all gross proceeds and gross income taxable under this chapter. All provisions of this chapter shall apply to the county surcharge on state tax. With respect to the surcharge, the director of taxation shall have all the rights and powers provided under this chapter. In addition, the director of taxation shall have the exclusive rights and power to determine the county or counties in which a person is engaged in business and, in the case of a person engaged in business in more than one county, the director shall determine, through apportionment or other means, that portion of the surcharge on state tax attributable to business conducted in each county.

(b) Each county surcharge on state tax that may be adopted pursuant to section 46- (a) shall be levied beginning in the taxable year after the adoption of the relevant county ordinance; provided that no surcharge on state tax may be levied prior to January 1, 2007.

(c) The county surcharge on state tax, if adopted, shall be imposed on the gross proceeds or gross income of all written contracts that require the passing on of the taxes imposed under this chapter; provided that if the gross proceeds or gross income are received as payments beginning in the taxable year in which the taxes become effective, on contracts entered into before June 30 of the year prior to the taxable year in which the taxes become effective, and the written contracts do not provide for the passing on of increased rates of taxes, the county surcharge on state tax shall not be imposed on the gross proceeds or gross income covered under the written contracts. The county surcharge on state tax shall be imposed on the gross proceeds or gross income from all contracts entered into on or after June 30 of the year prior to the taxable year in which the taxes become effective, regardless of whether the contract allows for the passing on of any tax or any tax increases.

(d) No county surcharge on state tax shall be established on any:

- (1) Gross income or gross proceeds taxable under this chapter at the one-half per cent tax rate;
- (2) Gross income or gross proceeds taxable under this chapter at the 0.15 per cent tax rate; or
- (3) Transactions, amounts, persons, gross income, or gross proceeds exempt from tax under this chapter.

(e) The director of taxation shall revise the general excise tax forms to provide for the clear and separate designation of the imposition and payment of the county surcharge on state tax.

(f) The taxpayer shall designate the taxation district to which the county surcharge on state tax is assigned in accordance with rules adopted by the director of taxation under chapter 91. The taxpayer shall file a schedule with the taxpayer's periodic and annual general excise tax returns summarizing the amount of taxes assigned to each taxation district.

(g) The penalties provided by section 231-39 for failure to file a tax return shall be imposed on the amount of surcharge due on the return being filed for the failure to file the schedule required to accompany the return. In addition, there shall be added to the tax an amount equal to ten per cent of the amount of the surcharge and tax due on the return being filed for the failure to file the schedule or the failure to correctly report the assignment of the general excise tax by taxation district on the schedule required under this subsection.

(h) All taxpayers who file on a fiscal year basis whose fiscal year ends after December 31 of the year prior to the taxable year in which the taxes become effective, shall file a short period annual return for the period preceding January 1 of

the taxable year in which the taxes become effective. Each fiscal year taxpayer shall also file a short period annual return for the period starting on January 1 of the taxable year in which the taxes become effective, and ending before January 1 of the following year.”

SECTION 4. Chapter 238, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§238- County surcharge on state tax; administration.** (a) The county surcharge on state tax, upon the adoption of a county ordinance and in accordance with the requirements of section 46- , shall be levied, assessed, and collected as provided in this section on the value of property and services taxable under this chapter. No county shall set the surcharge on state tax at a rate greater than one-half per cent of the value of property taxable under this chapter. All provisions of this chapter shall apply to the county surcharge on state tax. With respect to the surcharge, the director shall have all the rights and powers provided under this chapter. In addition, the director of taxation shall have the exclusive rights and power to determine the county or counties in which a person imports or purchases tangible personal property and, in the case of a person importing or purchasing tangible property in more than one county, the director shall determine, through apportionment or other means, that portion of the surcharge on state tax attributable to the importation or purchase in each county.

(b) Each county surcharge on state tax that may be adopted shall be levied beginning in the taxable year after the adoption of the relevant county ordinance; provided that no surcharge on state tax may be levied prior to January 1, 2007.

(c) No county surcharge on state tax shall be established upon any use taxable under this chapter at the one-half per cent tax rate or upon any use that is not subject to taxation or that is exempt from taxation under this chapter.

(d) The director of taxation shall revise the use tax forms to provide for the clear and separate designation of the imposition and payment of the county surcharge on state tax.

(e) The taxpayer shall designate the taxation district to which the county surcharge on state tax is assigned in accordance with rules adopted by the director of taxation under chapter 91. The taxpayer shall file a schedule with the taxpayer’s periodic and annual use tax returns summarizing the amount of taxes assigned to each taxation district.

(f) The penalties provided by section 231-39 for failure to file a tax return shall be imposed on the amount of surcharge due on the return being filed for the failure to file the schedule required to accompany the return. In addition, there shall be added to the tax an amount equal to ten per cent of the amount of the surcharge and tax due on the return being filed for the failure to file the schedule or the failure to correctly report the assignment of the use tax by taxation district on the schedule required under this subsection.

(g) All taxpayers who file on a fiscal year basis whose fiscal year ends after December 31 of the year prior to the taxable year in which the taxes become effective, shall file a short period annual return for the period preceding January 1 of the taxable year in which the taxes become effective. Each fiscal year taxpayer shall also file a short period annual return for the period starting on January 1 of the taxable year in which the taxes become effective, and ending before January 1 of the following year.”

SECTION 5. Chapter 248, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§248- County surcharge on state tax; disposition of proceeds. (a) If adopted by county ordinance, all county surcharges on state tax collected by the director of taxation shall be paid into the state treasury quarterly, within ten working days after collection, and shall be placed by the director of finance in special accounts. Out of the revenues generated by county surcharges on state tax paid into each respective state treasury special account, the director of finance shall deduct ten per cent of the gross proceeds of a respective county’s surcharge on state tax to reimburse the State for the costs of assessment, collection, and disposition of the county surcharge on state tax incurred by the State. Amounts retained shall be general fund realizations of the State.

(b) The amounts deducted for costs of assessment, collection, and disposition of county surcharges on state tax shall be withheld from payment to the counties by the State out of the county surcharges on state tax collected for the current calendar year.

(c) For the purpose of this section, the costs of assessment, collection, and disposition of the county surcharges on state tax shall include any and all costs, direct or indirect, that are deemed necessary and proper to effectively administer this section and sections 237- and 238- .

(d) After the deduction and withholding of the costs under subsections (a) and (b), the director of finance shall pay the remaining balance on quarterly basis to the director of finance of each county that has adopted a county surcharge on state tax under section 46- . The quarterly payments shall be made after the county surcharges on state tax have been paid into the state treasury special accounts or after the disposition of any tax appeal, as the case may be. All county surcharges on state tax collected shall be distributed by the director of finance to the county in which the county surcharge on state tax is generated and shall be a general fund realization of the county, to be used for the purposes specified in section 46- by each of the counties.”

SECTION 6. Section 437D-8.4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding any law to the contrary, a lessor may visibly pass on to a lessee:

- (1) The general excise tax attributable to the transaction;
- (2) The vehicle license and registration fee and weight taxes, prorated at 1/365th of the annual vehicle license and registration fee and weight taxes actually paid on the particular vehicle being rented for each full or partial twenty-four hour rental day that the vehicle is rented; provided the total of all vehicle license and registration fees charged to all lessees shall not exceed the annual vehicle license and registration fee actually paid for the particular vehicle rented;
- (3) The rental motor vehicle surcharge tax as provided in section 251-2 attributable to the transaction; ~~and~~
- (4) The county surcharge on state tax under section 46- ; provided that the lessor itemizes the tax for the lessee; and
- ~~(4)~~ (5) The rents or fees paid to the department of transportation under concession contracts, negotiated pursuant to chapter 102, or service permits, granted pursuant to title 19, Hawaii Administrative Rules, provided that:
  - (A) The rents or fees are limited to amounts that can be attributed to the proceeds of the particular transaction;
  - (B) The rents or fees shall not exceed the lessor’s net payments to the department of transportation made under concession contract or service permit;

- (C) The lessor submits to the department of transportation and the department of commerce and consumer affairs a statement, verified by a certified public accountant as correct, that reports the amounts of the rents or fees paid to the department of transportation pursuant to the applicable concession contract or service permit:
  - (i) For all airport locations; and
  - (ii) For each airport location;
- (D) The lessor submits to the department of transportation and the department of commerce and consumer affairs a statement, verified by a certified public accountant as correct, that reports the amounts charged to lessees:
  - (i) For all airport locations;
  - (ii) For each airport location; and
  - (iii) For each lessee;
- (E) The lessor includes in these reports the methodology used to determine the amount of fees charged to each lessee; and
- (F) The lessor submits the above information to the department of transportation and the department of commerce and consumer affairs within three months of the end of the preceding annual accounting period or contract year as determined by the applicable concession agreement or service permit.

The respective departments, in their sole discretion, may extend the time to submit the statement required in this subsection. If the director determines that an examination of the lessor's information is inappropriate under this subsection and the lessor fails to correct the matter within ninety days, the director may conduct an examination and charge a lessor an examination fee based upon the cost per hour per examiner for evaluating, investigating, and verifying compliance with this subsection, as well as additional amounts for travel, per diem, mileage, and other reasonable expenses incurred in connection with the examination, which shall relate solely to the requirements of this subsection, and which shall be billed by the departments as soon as feasible after the close of the examination. The cost per hour shall be \$40 or as may be established by rules adopted by the director. The lessor shall pay the amounts billed within thirty days following the billing. All moneys collected by the director shall be credited to the compliance resolution fund."

SECTION 7. Chapter 51D, Hawaii Revised Statutes, is repealed.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 9. This Act shall take effect upon its approval; provided that:

- (1) If none of the counties of the State adopt an ordinance to levy a county surcharge on state tax by December 31, 2005, this Act shall be repealed and section 437D-8.4, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act;
- (2) If any county does not adopt an ordinance to levy a county surcharge on state tax by December 31, 2005, it shall be prohibited from adopting such an ordinance pursuant to this Act, unless otherwise authorized by the legislature through a separate legislative act;

- (3) If an ordinance to levy a county surcharge on state tax is adopted by December 31, 2005:
- (A) The ordinance shall be repealed on December 31, 2022;
  - (B) This Act shall be repealed on December 31, 2022; and
  - (C) Section 437D-8.4, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act.

(Became law on July 12, 2005, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 248**

S.B. NO. 1451

A Bill for an Act Relating to Improving Water Quality.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that with growing concerns over the preservation of Hawaii's environment, ecosystems, and water quality, it is increasingly in the State's best interest to address these problems through innovative, comprehensive watershed management measures that are cost-effective and sustainable. One solution to Hawaii's ecosystem and water quality concerns is to reduce contamination in statewide waterways through the use of constructed wetlands.

Constructed wetlands re-create physical, chemical, and biological processes found in natural wetlands, providing ecological benefits such as the filtration of sediments, the removal of contaminants and excess nutrients, improved downstream water quality, coastal zone and coral reef protection, aquifer recharge and flood control, the protection of native species, and the creation or preservation of wildlife habitats. In addition, wetlands reduce the need for costly downstream dredging, create educational opportunities for universities and schools, create aesthetically pleasing recreation areas for the community, and contribute to a tourism-friendly environment.

The legislature further finds that comprehensive watershed management measures are essential to the sustainable improvement of water quality and cost-effective reduction of contaminated sediments in statewide waterways, and that a constructed wetland represents an effective demonstration of those measures.

Furthermore, comprehensive watershed management builds partnerships between local communities and state and federal agencies and strengthens overall statewide environmental protection efforts. State funds appropriated for wetland construction have the potential for matching federal funds from existing programs, such as those administered by the Environmental Protection Agency, U.S. Fish and Wildlife Service, Natural Resources Conservation Service, National Marine Fisheries Service, and the Farm Service Agency. Potential community partnerships also exist with key nongovernmental agencies such as Ducks Unlimited, The Nature Conservancy, Audubon Society, Sierra Club, Malama Hawaii, Ahupua'a Action Alliance, and other local groups.

The purpose of this Act is to appropriate funds during phase 1 to develop comprehensive strategies that establish broad water quality management goals for the entire Lake Wilson catchment consistent with comprehensive watershed management, such as the design of a constructed wetland for Lake Wilson.

**SECTION 2.** During phase 1, watershed scientists with the center for conservation research and training of the University of Hawaii shall prepare a comprehensive watershed management plan that includes the best strategies to manage water quality problems in Lake Wilson. This plan shall identify alternatives and land-use strategies consistent with comprehensive watershed management practices to develop the best means to improve water quality, identify effective means to lessen the impact of urbanization on downstream waterways, and mitigate other existing problems, such as flooding. The alternatives examined shall include storage of part of the water flow for a period of time in a constructed wetland to improve water quality and reduce downstream sediment contamination and downstream magnitude of storm water runoff.

The phase 1 comprehensive watershed management plan shall consider but not be limited to:

- (1) Physical, chemical, and biological watershed characteristics;
- (2) Storm water structures and drainage ways;
- (3) Community-based participatory planning;
- (4) Existing and future watershed development;
- (5) Existing and future land uses;
- (6) Relevant community organizations and functions;
- (7) Relevant state and federal institutional functions; and
- (8) Traditional ahupua'a-based approaches.

During phase 2, the center for conservation research and training shall identify and solicit federal and other funding and shall coordinate the pilot-scale demonstration project of the constructed wetland designs developed during the phase 1 comprehensive watershed management plan.

**SECTION 3.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2005-2006 for the center for conservation research and training, under phase 1, to develop the best strategies consistent with comprehensive watershed management to improve the water quality of Lake Wilson.

The sum appropriated shall be expended by the University of Hawaii for the purposes of this Act.

**SECTION 4.** This Act shall take effect on July 1, 2005.

(Became law on July 12, 2005, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

### Note

The legislature concluded that the governor's proclamation indicating the governor's intent to return S.B. No. 813 was constitutionally defective and that said measure became law. On July 13, 2005, the legislature assigned Act 249 to S.B. No. 813. The attorney general has taken the position that S.B. No. 813 did not become law.

A Bill for an Act Relating to Employment Security.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to appropriate federal Reed Act moneys to the department of labor and industrial relations for the following initiatives:

- (1) Provide seed moneys to the department of labor and industrial relations to be used by the department of labor and industrial relations, in consultation with the local workforce investment boards of each of the four counties, to plan, develop, and implement a computer system that benefits workforce development activities and programs operated by the counties;
- (2) Provide funding for the purposes of assisting the State's four local workforce investment boards. The funds will be used by the local boards to improve employer outreach and services, labor force pool expansion, capacity building, and to fund some shared costs for the operations of the one-stop career centers through the following:
  - (A) Employer outreach and services;
  - (B) Labor force pool expansion;
  - (C) Capacity building; and
  - (D) Servicing and maintaining the one-stop operating system; and
- (3) Provide funds to Oahu's workforce investment board; provided that the workforce investment board partners with Leeward community college to provide federal Wagner-Peyser services for immigrants from the Freely Associated States, pursuant to the workforce development program established under Act 225, Session Laws of Hawaii 2004.

Further, this Act is also intended to conform to the provisions of P.L. 107-147, Temporary Extended Unemployment Compensation Act of 2002 signed by the President of the United States of America on March 9, 2002. This amendment is needed because the requirements for the Reed Act funds distributed in 2002 differ from the prior special Reed Act distribution made in 2002 under the Balanced Budget Act of 1997. Under the Balanced Budget Act of 1997, Reed Act moneys were restricted to unemployment insurance administration purposes only. Section 383-123, Hawaii Revised Statutes, must be amended to conform to the Temporary Extended Unemployment Compensation Act of 2002 Reed Act amendments before Hawaii can use the distribution of \$31,000,000.

SECTION 2. Section 383-123, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Administrative use. Moneys credited to the account of this State in the unemployment trust fund by the Secretary of the Treasury of the United States pursuant to section 903 of the Social Security Act, as amended, may be requisitioned and used for the payment of benefits and for the payment of expenses incurred for the adminis-

tration of this State's unemployment compensation law and public employment offices pursuant to a specific appropriation of the legislature; provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which: (1) specifies the purposes for which the moneys are appropriated and the amounts appropriated therefor, (2) limits the period within which the moneys may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law, and (3) limits the amount which may be obligated [~~during a twelve-month period beginning on July 1 and ending on the next June 30~~] to an amount which does not exceed the amount by which (A) the aggregate of the amounts credited to the account of this State pursuant to section 903 of the Social Security Act, as amended, [~~during the same twelve-month period and the thirty-four preceding twelve-month periods~~] exceeds (B) the aggregate of the amounts obligated pursuant to this subsection and charged against the amounts credited to the account of this State [~~during such thirty-five twelve-month periods. For the purposes of this subsection, amounts which are obligated for administration or paid out for benefits shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during a twelve-month period specified herein may be charged against any amount credited during such twelve-month period earlier than the thirty-fourth preceding such period~~].

Moneys credited to the account of this State pursuant to section 903 of the Social Security Act, as amended, may not be withdrawn or used except for the payment of benefits and for the payment of expenses for the administration of this chapter pursuant to this subsection.

The appropriation, obligation, and expenditure or other disposition of [~~money~~] moneys appropriated under this subsection shall be accounted for in accordance with standards established by the United States Secretary of Labor. Moneys appropriated for the payment of expenses of administration pursuant to this subsection shall be requisitioned as needed for the payment of obligations incurred under the law appropriating the moneys and, upon requisition, shall be deposited in the employment security administration fund from which such payments shall be made. Moneys so deposited [~~shall~~], until expended, shall remain a part of the unemployment compensation fund and, if it will not be expended within one week after it is withdrawn from the unemployment trust fund, shall be returned at the earliest practical date to the Secretary of the Treasury of the United States for credit to this State's account in the unemployment trust fund.

(c) Notwithstanding subsection (b), moneys credited to the State's account in federal fiscal years ending in 2000, 2001, and 2002 shall be used solely for the administration of the unemployment compensation program and are not subject to the specific appropriation requirements of subsection (b)[~~:-~~]; except that moneys credited in calendar year 2002 with respect to P.L. 107-147 shall not be subject to the conditions of this subsection or the two-year limitation requirement specified in subsection (b)."

SECTION 3. There is appropriated from the unemployment insurance trust fund from moneys deposited pursuant to section 383-123(b) the sum of \$10,000,000, or so much thereof as may be necessary for fiscal year 2005-2006, and the same sum, or so much thereof as may be necessary for fiscal year 2006-2007, for the purposes specified in this Act; provided that of the \$10,000,000 appropriated for each fiscal year:

(1) The sum of:

(A) \$4,795,000 shall be allocated to the city and county of Honolulu's workforce investment board; provided that the workforce investment board shall partner with the Leeward community college to provide federal Wagner-Peyser services for immigrants from the Freely Associated States, pursuant to the work-



force development program established under Act 225, Session Laws of Hawaii 2004;

- (B) \$1,252,775 shall be allocated to the county of Maui's workforce investment board;
- (C) \$1,000,000 shall be allocated to the county of Kauai's workforce investment board; and
- (D) \$1,650,000 shall be allocated to the county of Hawaii's workforce investment board; provided that the workforce investment board shall partner with the department of labor and industrial relations, workforce development division, to provide federal Wagner-Peyser services for the eradication of coqui frogs and/or other invasive species and to serve residents of Hamakua, Waimea, Kohala, and Waikoloa;

to improve employer outreach and services, labor force pool expansion, capacity building, and to fund some shared costs for the operations of the one-stop career centers within each county; and

- (2) The sum of \$1,302,225 shall be allocated to the department of labor and industrial relations to be used by the department of labor and industrial relations, in consultation with local workforce investment boards of each of the four counties, to plan, develop, and implement a computer system that benefits workforce development activities and programs operated by the counties.

The sums appropriated shall be expended by the department of labor and industrial relations for the purposes of this Act.

SECTION 4. No funds appropriated under section 3 to the department of labor and industrial relations for use by the department of labor and industrial relations and the counties may be released by the governor to the department of labor and industrial relations until all funds appropriated by the legislature for the benefit of the counties under section 3 have been timely, fully, and completely released to the counties as intended by the legislature.

The allotment system powers granted to the governor and the executive branch by the legislature under part II of chapter 37, Hawaii Revised Statutes, are not applicable to the appropriation of federal Reed Act funds being made in section 3 as the federal funds being appropriated under this Act do not affect the solvency of the general fund.

SECTION 5. The department of labor and industrial relations shall report back to the legislature at least twenty days prior to the commencing of the regular session of 2006 on the status of the timely release of funds appropriated under this Act to the counties, and the department shall make another report to the legislature at least twenty days prior to the commencement of the regular session of 2007 on the status of the timely release of the year two funds appropriated to the counties under this Act. Where delays in the release of the funds are reported to the legislature by the department of labor and industrial relations or the counties, the department of labor and industrial relations shall explain to the legislature why there have been delays in the timely release of these funds, and the department shall submit to the legislature, as soon as practical or at the next earliest sitting of the legislature, a corrective action plan intended to ensure the timely release of these funds.

SECTION 6. If any provision of this Act is found to be in conflict with federal requirements that are a prescribed condition for the allocation of federal funds to the State, the conflicting provision of this Act shall be held inoperative solely to the extent of the conflict with respect to the agencies directly affected, and

## ACT 250

shall not affect the operation of the remainder of this Act in its application to the agencies concerned.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval; provided that section 3 shall take effect on July 1, 2005.

## ACT 250

H.B. NO. 1548

### Note

The legislature concluded that the governor's proclamation indicating the governor's intent to return H.B. No. 1548 was constitutionally defective and that said measure became law. On July 13, 2005, the legislature assigned Act 250 to H.B. No. 1548. The attorney general has taken the position that H.B. No. 1548 did not become law.

A Bill for an Act Relating to the Employer-Union Health Benefits Trust Fund.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 87A-5, Hawaii Revised Statutes, is amended to read as follows:

“~~[E]§87A-5[.]~~ **Composition of board.** The board of trustees of the employer-union health benefits trust fund shall consist of ten trustees appointed by the governor ~~[as follows:]~~ in accordance with the following procedure:

- (1) Five trustees, one of whom shall represent retirees, to represent employee-beneficiaries~~[-. The trustees shall be appointed from a list of three nominees per trustee submitted by the exclusive employee representative organizations;]~~ and to be selected as follows:
  - (A) Three trustees shall be appointed from a list of two nominees per trustee selected by each of the three exclusive representative organizations that have the largest number of employee-beneficiaries;
  - (B) One trustee shall be appointed from a list of two nominees selected by mutual agreement of the remaining exclusive employee representative organizations; and
  - (C) One trustee representing retirees shall be appointed from a list of two nominees selected by mutual agreement of all eligible exclusive representatives; and
- (2) Five trustees to represent public employers.

Section 26-34 shall not apply to board member selection and terms. Notwithstanding any other provision of this section, no exclusive representative of a bargaining unit that sponsors or participates in a voluntary employee beneficiary association shall be eligible to select nominees or to be represented by a trustee on the board.

As used in this section, the term “exclusive representative” shall have the same meaning as in section 89-2.”

SECTION 2. Section 87A-6, Hawaii Revised Statutes, is amended to read as follows:

~~“[§87A-6] Term of a trustee; vacancy. The term of office of each trustee shall be four years; provided that a trustee may be reappointed for one additional consecutive four-year term. [Each term shall commence on January 1 and expire on December 31. The governor may reduce the terms of those initially appointed so as to provide, as far as practicable, for the expiration of an equal number of terms at intervals of one year.]~~

~~A vacancy on the board shall be filled [by appointment of the governor:] in the same manner as the trustee who vacated that position was nominated or appointed; provided that the criteria used for [selecting] nominating or appointing the successor shall be the same criteria used for [selecting] nominating or appointing the person's predecessor[-. The person appointed to fill a vacancy shall serve for the remainder of the term of the person's predecessor.]; provided further that vacancies on the board for each trustee position representing retirees and employee-beneficiaries appointed under section 87A-5 (1)(A) and (B) shall be filled by appointment of the governor as follows:~~

- ~~(1) If a vacancy occurs in one of the trustee positions described in section 87A-5(1)(A), then the vacancy shall be appointed from a list of two nominees submitted by the exclusive employee representative from among the three largest exclusive employee representatives that does not have a trustee among the three trustee positions;~~
- ~~(2) If a vacancy occurs in a trustee position described in section 87A-5(1)(B), then the vacancy shall be appointed from a list of two nominees submitted by mutual agreement of the exclusive employee representatives described in section 87A-5(1)(B); and~~
- ~~(3) If a vacancy occurs in the retiree position described in section 87A-5(1)(C), then the vacancy shall be appointed from a list of two nominees submitted by mutual agreement of all eligible exclusive employee representatives.”~~

~~If by the end of a trustee's term [a] the trustee is not reappointed or the trustee's successor is not appointed, the trustee shall serve until the trustee's successor is appointed.”~~

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.



**PROPOSED CONSTITUTIONAL  
AMENDMENT**



# PROPOSED CONSTITUTIONAL AMENDMENT

## S.B. NO. 1256

A Bill for an Act Proposing a Constitutional Amendment to Article X, Section 6, of the Hawaii Constitution to Modify the Appointment Process for the Board of Regents.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to propose an amendment to article X, section 6, of the Constitution of the State of Hawaii to modify the University of Hawaii board of regents' appointment process.

It is the intention of the legislature that the existing members of the board of regents of the University of Hawaii serve their full terms of office. As each term expires, the regent will be replaced by an appointed member screened and proposed by the candidate advisory council.

SECTION 2. Article X, section 6, of the Constitution of the State of Hawaii is amended to read as follows:

### **“BOARD OF REGENTS; POWERS**

**Section 6.** There shall be a board of regents of the University of Hawaii, the members of which shall be nominated and, by and with the advice and consent of the senate, appointed by the governor[-] from pools of qualified candidates presented to the governor by the candidate advisory council for the board of regents of the University of Hawaii, as provided by law. At least part of the membership of the board shall represent geographic subdivisions of the State. The board shall have the power to formulate policy, and to exercise control over the university through its executive officer, the president of the university, who shall be appointed by the board. The board shall also have exclusive jurisdiction over the internal structure, management, and operation of the university. This section shall not limit the power of the legislature to enact laws of statewide concern. The legislature shall have the exclusive jurisdiction to identify laws of statewide concern.”

SECTION 3. The question to be printed on the ballot shall be as follows:

“Shall the governor be required to select board of regents candidates from a pool of qualified candidates screened and proposed by a candidate advisory council for the board of regents of the University of Hawaii as provided by law?”

SECTION 4. Constitutional material to be repealed is bracketed and stricken. New constitutional material is underscored.

SECTION 5. This part shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.

**Session Laws of Hawaii  
Passed By The  
Twenty-Third State Legislature  
Special Session  
2005**

**ACT 1**

H.B. NO. 160

A Bill for an Act Relating to the Compliance Resolution Fund.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 431:2-215, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The ~~[commissioner shall determine the]~~ amount or amounts to be assessed ~~[and the time any moneys from assessments are due]~~ for each line or type of insurance or entity regulated under title 24~~;~~ ~~provided that:~~

- (1) ~~The criteria for making the assessment shall be established by rule; provided further that the commissioner shall have provisional authority to make assessments prior to adoption of the rule but this provisional authority shall not extend beyond two years from June 28, 1999;~~ shall be determined

and assessed as provided below:

- ~~[(2)]~~ (1) The insurers or entities regulated under title 24 shall be provided [reasonable] at least sixty days notice of when their respective assessments are due;
- (2) The total amount or amounts to be assessed of insurers or entities regulated under title 24 in all lines or types of insurance shall be calculated based on the commissioner’s proposed fiscal year budget, less funds in the insurance regulation sub-account of the compliance resolution fund on June 30 of the fiscal year immediately preceding the fiscal year of the proposed budget and less the commissioner’s anticipated revenues;
- (3) The assessments by line or type shall bear a reasonable relationship to the costs of regulating the line or type of insurance, including any administrative costs of the division; and
- (4) The sum total of all assessments made and collected shall not exceed the special fund ceiling or ceilings related to the fund that are established by the legislature~~[-];~~ provided that the total assessments for all lines or types of insurance in any one fiscal year shall not exceed \$5,000,000.

[As used in this subsection, “reasonable notice” means a period of at least sixty days.]”



SECTION 2. Section 431:19-101.8, Hawaii Revised Statutes, is amended to read as follows:

**“§431:19-101.8 Captive insurance administrative fund.** (a) The commissioner may establish a separate fund designated as the captive insurance administrative fund~~[-]~~ to be expended by the commissioner to carry out the commissioner's duties and obligations under article 19 of chapter 431.

(b) All moneys collected pursuant to this article, including premium taxes [eollected] from captive insurance companies licensed in this State under this article, all captive insurance company application fees, annual license fees, and examination fees [collected pursuant to this article], shall be credited to the captive insurance administrative fund. ~~[Each fiscal year, the commissioner shall transfer out of the fund and deposit into the compliance resolution fund a total of forty per cent of the total moneys credited to the fund in the prior fiscal year or \$1,500,000, whichever is greater, to pay for the expenditures contemplated by this section. In addition, each fiscal year, the commissioner shall transfer out of the fund and deposit into the compliance resolution fund up]~~

(c) Up to ten per cent of the total moneys credited to the fund in the prior fiscal year may be used for purposes of promoting Hawaii as a captive insurance domicile. Disbursements for promotional activities from the ~~[compliance resolution]~~ fund shall be subject to the approval of the director of commerce and consumer affairs. ~~[Subject to the foregoing expenditure limits, all moneys remaining in the fund shall revert to the general fund.]~~

(d) Sums from the fund expended by the commissioner shall be used to defray any administrative costs, including personnel costs, associated with the captive programs of the division, and costs incurred by supporting offices, branches, divisions, and departments. Any law to the contrary notwithstanding, the commissioner may use the moneys in the fund to employ or retain, by contract or otherwise, without regard to chapter 76, hearings officers, attorneys, investigators, accountants, examiners, and other necessary professional, technical, and support personnel to implement and carry out the purposes of article 19 of chapter 431; provided that any position, except any attorney position, that is subject to chapter 76 prior to July 1, 1999, shall remain subject to chapter 76.

(e) Moneys deposited by the commissioner in the fund shall not revert to the general fund.”

SECTION 3. The office of the auditor shall conduct a financial and management audit of the insurance regulation sub-account of the compliance resolution fund and shall report its findings to the legislature not less than twenty days prior to the convening of the 2008 regular legislative session. The audit shall examine the two consecutive fiscal years immediately preceding the year in which it is submitted.

SECTION 4. There is appropriated out of the captive insurance administrative fund the sum of \$1,500,000 or so much thereof as may be necessary for fiscal year 2005-2006 and the sum of \$1,500,000 or so much thereof as may be necessary for fiscal year 2006-2007 for the operating expenses of the captive insurance branch and for the development of the captive insurance industry in Hawaii.

The sums appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2005.

(Vetoed by Governor and veto overridden by Legislature on July 12, 2005.)

## ACT 2

H.B. NO. 180

A Bill for an Act Relating to Public Employees.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 89C-3, Hawaii Revised Statutes, is amended to read as follows:

**“§89C-3 Adjustments for excluded civil service employees.** (a) Each jurisdiction shall ~~[determine the]~~ provide adjustments ~~[that are relevant]~~ for its respective excluded civil service employees based on recommendations from its respective personnel director.

(b) In formulating recommendations to the appropriate authority, the respective director shall:

- (1) Establish procedures that allow excluded civil service employees and employee organizations representing them ~~[the opportunity]~~ to provide input on ~~[the kinds of]~~ adjustments that are relevant and important to them for the director’s ~~[consideration;]~~ approval;
- (2) Ensure that adjustments for excluded civil service employees result in compensation and benefit packages that are ~~[appropriate for what they do and the contribution they make in consideration of]~~ at least equal to the compensation and benefit packages provided under collective bargaining agreements for counterparts and subordinates within the employer’s jurisdiction; and
- (3) ~~[Confer with other directors on proposed adjustments to ensure]~~ Ensure that proposed adjustments are consistent with chapter 76[-] and equivalent or not less than adjustments provided within the employer’s jurisdiction.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2005.

(Vetoed by Governor and veto overridden by Legislature on July 12, 2005.)

## ACT 3

H.B. NO. 1224

A Bill for an Act Relating to Taxation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the National Conference of State Legislatures estimates that, in 2003, Hawaii lost approximately \$112,000,000 to \$117,000,000 in state and local revenues due to the State’s inability to capture tax revenues from electronic commerce transactions. The National Conference of State Legislatures estimates that, by 2008, Hawaii will lose between \$157,000,000 and

\$245,500,000 if nothing is done by that time. Hawaii stands to be one of the top ten states in terms of tax revenues lost in electronic commerce transactions.

The legislature also finds that, with regard to the loss in revenues due to the State's inability to tax electronic commerce, Hawaii's situation is not unique. Other states are currently dealing with this very same problem. To this end, the Streamlined Sales Tax Project (Project) is an effort created by state governments, with input from local governments and the private sector, to simplify and modernize the collection and administration of the sales and use taxes. The Project's proposals include tax law simplifications, more efficient administrative procedures, and implementing emerging technologies to substantially reduce the burden of tax collection. The Project's proposals are focused on improving sales and use tax administration systems for both local businesses and remote sellers of all types of commerce. Forty-two states and the District of Columbia are involved in the Project. Nationally, forty-five states and the District of Columbia impose a sales and use tax.

The Project was organized in March 2000, and is conducting its work through a steering committee with co-chairs and a number of work groups. Project participants are generally state revenue department administrators, as well as representatives of state legislatures and local governments. Businesses, including national retailers, trade associations, manufacturers, direct marketers, telecommunications companies, leasing companies, technology companies, printers, accounting firms, and others, have actively participated in the Project by offering expertise and input, reviewing proposals, suggesting language, and testifying at public hearings.

The goal of the Streamlined Sales Tax Project is to provide the states with a streamlined sales tax system that includes the following key features:

- (1) Uniform definitions within tax laws. Legislatures still choose what is taxable or exempt in their state. However, participating states will agree to use the common definitions for key items in the tax base and will not deviate from these definitions. As states move from their current definitions to the Project's definitions, a certain amount of impact on state revenues is inevitable. However, it is the intent of the Project to provide states with the ability to closely mirror their existing tax bases through common definitions;
- (2) Rate simplification. States will be allowed one state rate and a second state rate in limited circumstances (food and drugs). Each local jurisdiction will be allowed one local rate. A state or local government may not choose to tax telecommunications services, for example, at one rate and all other items of tangible personal property or taxable services at another rate. State and local governments will accept responsibility for notice of rate and boundary changes at restricted times. States will provide an on-line rate/jurisdiction database to simplify rate determinations;
- (3) State level tax administration of all state and local sales and use taxes. Businesses will no longer file tax returns with each local government within which it conducts business in a state. Each state will provide a central point of administration for all state and local sales and use taxes and the distribution of the local taxes to the local governments. A state and its local governments will use common tax bases;
- (4) Uniform sourcing rules. States will have uniform and simple rules for how they will source transactions to state and local governments. The uniform rules will be destination/delivery based and uniform for tangible personal property, digital property, and services. Special sourcing rules will be developed for unique industries;
- (5) Simplified exemption administration for use- and entity-based exemptions. Sellers are relieved of the "good faith" requirements that exist in current law and will not be liable for uncollected tax. Purchasers will be

responsible for paying the tax, interest, and penalties for claiming incorrect exemptions. States will have a uniform exemption certificate in paper and electronic form;

- (6) Uniform audit procedures. Sellers who participate in one of the certified Streamlined Sales Tax System technology models will either not be audited or will have limited scope audits, depending on the technology model used. The states may conduct joint audits of large multi-state businesses; and
- (7) State funding of the system. Participating states will apportion costs of a third-party online sales tax collections software system among themselves. It is intended that each state's allocation of costs of the new software system will be paid out of the higher level of tax revenues collected under the Streamlined Sales Tax System Project.

The legislature further finds that the states are also participating in a joint business-government study of the costs of collection on sellers. The Project proposes that states change their sales and use tax laws to conform with the simplifications as proposed by the Project. Thus, the simplifications would apply to all sellers. Sellers who do not have a physical presence or "nexus" are not required to collect sales and use taxes unless Congress chooses to require collection from all sellers for all types of commerce. Sellers without a physical presence can volunteer to collect under the proposed simplifications. Registration by sellers to voluntarily collect sales and use taxes will not infer that the business must pay business activity taxes, such as the corporate franchise or income tax.

The legislature further finds that the Streamlined Sales Tax Project envisions two components to the legislation necessary to accomplish the Project's goals. First, states would adopt enabling legislation referred to as the Uniform Sales and Use Tax Administration Act ("Act"). The Act allows the State to enter into an agreement with one or more states to simplify and modernize sales and use tax administration in order to reduce the burden of tax compliance for all sellers and all types of commerce.

According to the Project, states would amend or modify their sales and use tax laws to achieve the simplifications and uniformity required by the participating states working together. The Project refers to this legislation as the Streamlined Sales and Use Tax Agreement ("Agreement"). Some states will require only minor changes to current law to implement the requirements of the Agreement. Other states with more complicated sales tax laws may require significant changes to current law to be in accord with the Agreement.

In Hawaii, the legislature finds that few amendments are needed to the State's existing general excise and use tax laws to comply with the requirements of the Agreement and Act. The legislature further finds that, with the amendments contained in this Act, Hawaii will have conformed in most respects to the seven key features described above. The legislature intends that passage of this Act meets the threshold requirements for Hawaii to petition for a certificate of compliance and membership under the Agreement.

A certificate of compliance would document each state's compliance with the provisions of the Agreement and cite applicable statutes, rules or regulations, or other authorities supporting such compliance. Public notice and comment will be provided before a state becomes part of the interstate Agreement. A state is in compliance with the Agreement if the effect of the state's laws, rules or regulations, and policies is substantially compliant with each of the requirements of the Agreement. If a state is found to be out of compliance with the Agreement, it will not be accepted into the interstate Agreement or will be sanctioned or expelled by the other participating states. In a voluntary system, sellers who are voluntarily collecting sales taxes for participating states may decide to no longer collect for the expelled state. Also, that state may not have a vote on changes in the Agreement.

Under the Agreement, a governing board will be comprised of representatives of each member state of the Agreement. Each member state is entitled to one vote on the governing board. The governing board is responsible for interpretations of the Agreement, amendments to the Agreement, and issue resolution. A State and Local Government Advisory Council and a Business and Taxpayer Advisory Council from the private sector will advise the governing board.

On November 12, 2002, thirty states and the District of Columbia approved the interstate Agreement provisions. As of April 2004, twenty states have moved forward and enacted all or part of the conforming legislation. It is anticipated that states that enacted the conforming legislation and are found to be in compliance with the Agreement will continue as the governing states of the interstate Agreement of the future.

SECTION 2. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§231- Streamlined sales and use tax agreement compliance.** (a) A seller that registers to pay or collect and remit sales or use tax in accordance with the terms of the streamlined sales and use tax agreement may select one of the following methods of remittance or other method allowed by law to remit the taxes collected, as follows:

- (1) A model 1 seller, who shall be a seller who selects a certified service provider as an agent to perform all the seller’s sales or use tax functions, other than the seller’s obligation to remit tax on its own purchases;
- (2) A model 2 seller, who shall be a seller who selects a certified automated system to use which calculates the amount of tax due on a transaction; or
- (3) A model 3 seller, who shall be a seller who uses its own proprietary automated sales tax system that has been certified as a certified automated system.

(b) A certified service provider in model 1 shall be allowed a monetary allowance in accordance with the terms of the contract that the states participating in the streamlined sales and use tax agreement execute with the provider. The director shall prescribe the allowance in accordance with the terms of the contract, which shall be funded entirely from money collected in model 1.

A monetary allowance to a certified service provider may be based on one or more of the following incentives:

- (1) A base rate that applies to taxable transactions processed by the provider; and
- (2) For a period not to exceed twenty-four months following a voluntary seller’s registration through the streamlined sales and use tax agreement’s central registration process, a percentage of tax revenue generated for a member state by the voluntary seller for each member state for which the seller does not have a requirement to register to collect the tax.

(c) A model 2 seller shall be allowed a monetary allowance that the director shall prescribe in accordance with the terms agreed to by the member states of the streamlined sales and use tax agreement. The member states initially anticipate that they will provide a monetary allowance to sellers under model 2 based on the following:

- (1) Each seller shall receive a base rate for a period not to exceed twenty-four months following the commencement of participation by the seller; and
- (2) For a period not to exceed twenty-four months following a voluntary seller’s registration through the streamlined sales and use tax agree-

ment's central registration process, a percentage of tax revenue generated for a member state by the voluntary seller for each member state for which the seller does not have a requirement to register to collect the tax.

(d) A model 3 seller and all other sellers that are not under model 1 or model 2 shall be allowed a monetary allowance that the director shall prescribe in accordance with the terms agreed to by the member states of the streamlined sales and use tax agreement. The member states initially anticipate that they will provide a monetary allowance to sellers under model 3 and to all other sellers that are not under models 1 or 2 based on the following:

- (1) For a period not to exceed twenty-four months following a voluntary seller's registration through the streamlined sales and use tax agreement's central registration process; and
- (2) A percentage of tax revenue generated for a member state by the voluntary seller for each member state for which the seller does not have a requirement to register to collect the tax.

(e) Pursuant to the streamlined sales and use tax agreement, the director is authorized to accept certified automated systems and certified service providers to aid in the administration of the collection of the tax imposed under chapter 237 and chapter 238.

(f) No person required to collect any tax imposed by chapter 237 or 238, or any tax authorized to be collected under the streamlined sales and use tax agreement shall be held liable for having charged and collected the incorrect amount of sales or use tax by reason of reliance on erroneous data provided by the director with respect to tax rates, boundaries, or taxing jurisdiction assignments.

(g) In connection with a purchaser's request from a seller of over-collected sales or use taxes, a seller shall be presumed to have a reasonable business practice, if in the collection of the sales or use taxes, the seller:

- (1) Uses either a provider or a system, including a proprietary system, that is certified by the State; and
- (2) Has remitted to the State all taxes collected less any deductions, credits, or collection allowances.

(h) For the purposes of this section, "streamlined sales and use tax agreement" means the agreement authorized under chapter 255D."

SECTION 3. Section 255D-3, Hawaii Revised Statutes, is amended to read as follows:

**“~~[E]~~§255D-3~~[F]~~ Authority to participate in multistate negotiations. ~~[(a)]~~** For the purposes of reviewing or amending the agreement embodying the simplification requirements in section 255D-6, the State may enter into multistate discussions. For purposes of these discussions, the State shall be represented by the department. ~~[The department shall regularly consult with an advisory council regarding these discussions.~~

~~(b) The department shall regularly consult with the advisory council and use its best efforts to consult with the advisory council before any multistate discussions in which it is anticipated that amendments may be proposed to the agreement embodying the simplification requirements in section 255D-6.~~

~~(c) The advisory council shall consist of not more than five members who shall be appointed by the governor under section 26-34. The members shall serve without compensation but shall be reimbursed for actual expenses, including travel expenses, that are necessary for the performance of their duties.]”~~

SECTION 4. Section 255D-4, Hawaii Revised Statutes, is amended to read as follows:

**“§255D-4 Authority to enter agreement.** The department with the concurrence of the legislature may enter into the streamlined sales and use tax agreement with one or more states to simplify and modernize sales and use tax administration to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the department may act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers. The department may take other actions reasonably required to implement this section. Other actions authorized by this section include but are not limited to the adoption of rules not subject to chapter 91, with other member states, of goods and services in furtherance of the cooperative agreement. The department, or the department’s designee, may represent this State before the other states that are signatories to the agreement.’”

SECTION 5. (a) No later than August 1, 2005, the department of taxation, together with three designees selected by the president of the senate and three designees selected by the speaker of the house of representatives shall:

- (1) Identify issues that need to be resolved to effectuate the orderly enactment and operation of a streamlined sales and use tax that is based on the Streamlined Sales Tax Project’s model Agreement and Act, including issues of conformance with the State’s existing general excise tax law and other laws as may be required; and
  - (2) Conduct informational briefings for the legislature on the department’s efforts to comply with the purposes of this Act.
- (b) No later than twenty days prior to the convening of the 2006 regular session, the department of taxation shall submit proposed legislation to the legislature for its enactment prior to January 1, 2007, that provides for:
- (1) Any further amendments requested by the Streamlined Sales Tax Project to address issues such as sourcing and rounding and to enhance the operation of a streamlined sales and use tax in accordance with the Streamlined Sales Tax Project’s model Agreement and Act; and
  - (2) Any additional conforming amendments to the State’s existing general excise tax law and other laws as may be required.

SECTION 6. For the purposes of complying with the requirements to apply for certification under the Streamlined Sales and Use Tax Agreement, the legislature declares that chapters 237 and 238, Hawaii Revised Statutes, substantially comply with the requirements set forth under the Streamlined Sales and Use Tax Agreement.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2005-2006 for technical assistance and briefings to enable the legislature to carry out its responsibilities in section 5 of this Act.

Technical assistance may include analysis of the fiscal and legal impacts of proposed conformance with the existing general excise tax law and other laws and any other issues that might result from the implementation of a streamlined and sales and use tax. Funds may also be expended for preparation of proposed legislation above and beyond that which could be undertaken by state employees due to the specialized nature of this project. Funds may be further expended in briefings of legislators and any other parties deemed appropriate by the designees of the

president of the senate and the speaker of the house of representatives and in any other support activities for this project.

The sum appropriated shall be expended by the office of the auditor for the purposes of this Act. The office of the auditor, given the deadline imposed by section 5 of this Act, shall secure the services necessary to support the project in as expeditious a manner as possible and without regard to chapter 103D, Hawaii Revised Statutes.

SECTION 8. Notwithstanding the provisions of any law making it unlawful for any person, officer, or employee of the State to make known information imparted by any tax return or permit any tax return to be seen or examined by any person, it shall be lawful to permit a private contractor contracted under section 7 of this Act to inspect any tax return of any taxpayer, or to furnish to the private contractor an abstract of the return or supply the private contractor with information concerning any item contained in the return or disclosed by the report of any investigation of the return or of the subject matter of the return only for the purposes of conforming the State's general excise and use taxes to be operative with the Streamlined Sales Tax Project's model Agreement and Act.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 10. This Act shall take effect upon its approval; provided that section 7 shall take effect on July 1, 2005.

(Vetoed by Governor and veto overridden by Legislature on July 12, 2005.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 4**

H.B. NO. 1317

A Bill for an Act Relating to Medicaid.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that managed care plans for medicaid beneficiaries should offer a broad range of coverage, including hospital stays, medical appointments, and prescription drugs. Removing individual benefit components would result in a fragmented health care delivery system that may result in higher costs and reduced quality of care.

The purpose of this Act is to:

- (1) Require the department of human services to submit a report to the legislature on the impact of carving out pharmaceutical benefits management from managed care plans; and
- (2) Prohibit the department of human services from taking any action to remove pharmaceutical benefits management from managed care plans that provide health care coverage for Hawaii medicaid beneficiaries.

SECTION 2. (a) The department of human services shall report to the legislature no later than twenty days prior to the convening of the regular session of 2006 on the impact of carving out pharmaceutical benefits management from managed care plans. The report shall include:



- (1) An analysis of the cost elements of pharmaceutical benefits management by the department of human services versus pharmaceutical benefits management under the QUEST-managed care plans, including generic utilization, and using available rebate information and reasonable estimates to calculate net pharmacy costs and comparative cost savings;
  - (2) A comparison of the quality and efficacy of the different classes of drugs on the department of human services' preferred drug list and those of the QUEST-managed care plans; and
  - (3) Comparisons of the effects on management of care, patient care, including access and quality, and the impact on physicians, pharmacists, and other health care providers.
- (b) The report shall exclude from its analysis, pharmacy utilization, costs, and rebate information relating to the medicaid population that will receive pharmacy coverage under medicare part D beginning January 1, 2006.
- (c) In developing the report, the department of human services shall conduct community roundtables for purposes of including input, data information, and concerns from all affected stakeholders.

SECTION 3. The department of human services shall not take any action to remove pharmaceutical benefits management from managed care plans that provide health care coverage for Hawaii medicaid beneficiaries.

SECTION 4. This Act shall take effect upon its approval.

(Vetoed by Governor and veto overridden by Legislature on July 12, 2005.)

## ACT 5

S.B. NO. 960

A Bill for an Act Relating to Civil Defense.

*Be It Enacted by the Legislature of the State of Hawaii:*

### PART I

SECTION 1. This Act may be cited as the Disaster Emergency Preparedness Act of 2005.

SECTION 2. The legislature finds that the State's growing population and a general lack of awareness on the part of the public with respect to natural disaster preparedness, dictates appropriate government action. This Act addresses the need for disaster preparedness by appropriating funds for natural disaster preparedness, including tsunami and hurricane preparedness efforts, appropriating funds from the hurricane reserve trust fund to retrofit and protect public buildings against hurricanes, developing standards for residential safe rooms, and improving the loss mitigation grant program by permitting the construction of safe rooms.

The legislature finds that, although the funding for this Act is financed through the principal in the hurricane reserve trust fund, the expended funds will stimulate the economy and replace any "lost" interest income from the fund without jeopardizing the State's ability to reissue hurricane insurance, if necessary.

The original purpose of establishing the Hawaii hurricane relief fund was to provide a means of financing hurricane insurance coverage for the hurricane after

the next one, provided that insurers withdraw from the Hawaii hurricane insurance market. This Act will provide protections against the next natural disaster.

## PART II

SECTION 3. Due to Hawaii's experience with tsunamis and hurricanes, a disaster alert system is in place providing early warning to residents. Even with this comprehensive, state-of-the-art-monitoring system in place, Hawaii's disaster warning efforts have not kept pace. Antiquated siren systems, outdated evacuation maps in telephone books, insufficient shelter space, limited public education projects, and a lack of around-the-clock alert staff mean Hawaii residents may lose critical seconds in evacuation time or, worse, be unable to access emergency care and shelter in the event a disaster strikes.

The purpose of this part is to appropriate funds for natural disaster preparedness efforts, including installing and maintaining new siren systems, updating evacuation maps in phone books, constructing additional shelter space and retrofitting existing public buildings that could serve as emergency shelters, developing statewide residential safe room design standards by January 1, 2006, providing around-the-clock alert staff for the civil defense division, and expanding public education campaigns that emphasize the need for natural disaster, including tsunami and hurricane preparedness.

SECTION 4. There is appropriated out of the hurricane reserve trust fund the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2005-2006, and the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2006-2007 for tsunami and hurricane preparedness efforts, including installing and maintaining new siren systems, updating evacuation maps in telephone books, constructing additional shelter space and retrofitting existing public buildings that could serve as emergency shelters, developing statewide residential safe room design standards by January 1, 2006, providing around-the-clock alert staff for the civil defense division of the department of defense, and expanding public education campaigns emphasizing the need for tsunami and hurricane preparedness.

The sum appropriated in this part shall be expended by the department of defense for the purposes of this part.

SECTION 5. The department of defense shall develop Hawaii public shelter and residential safe room design criteria by January 1, 2006, and shall facilitate impact resistance testing and certification of safe room design; provided that safe room prototype models are developed with public or private sector grants or investments. These criteria shall include Hawaii performance-based standards for enhanced hurricane protection areas and essential government facilities capable of withstanding a five hundred-year hurricane event and providing continuity of government or sheltering operations thereafter.

SECTION 6. The department of defense shall coordinate all work performed pursuant to this part with the state or county agencies having responsibility for the repair, maintenance, and upkeep of any public building to be retrofitted.

SECTION 7. Any portion of the appropriations may be used for the purpose of matching federal hazard mitigation funds if these funds become available for use in retrofitting public buildings with hurricane protective measures.

## PART III

SECTION 8. The loss mitigation grant program was established to assist residents with installing wind resistive devices to protect their property against hurricanes. The addition of providing grants for safe rooms will also allow residents who may not be able to afford reinforcement of their entire home, protection against natural disasters.

SECTION 9. Section 431:22-101, Hawaii Revised Statutes, is amended by amending the definition of "wind resistive devices" to read as follows:

““Wind resistive devices” means devices and techniques, as identified and determined in accordance with section 431:22-104(b), that increase a building’s or structure’s resistance to damage from wind forces. The term shall also include safe rooms that are defined and built pursuant to design standards of the department of defense’s civil defense division that are adopted pursuant to chapter 91.”

SECTION 10. Section 431:22-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Subject to the availability of funds and the standards in this article, grants for wind resistive devices shall be awarded by the commissioner:

- (1) That reimburse [~~fifty~~] thirty-five per cent of costs incurred for the wind resistive devices and their installation [~~and inspection~~], up to a maximum total reimbursement of \$2,100 per dwelling;
- (2) On a first-come, first-served basis, as determined by the commissioner; and
- (3) For a wind resistive device or devices installed only in a single or multi-family residential dwelling.”

SECTION 11. Section 431:22-104, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) In addition, a grant may be made to an applicant only if the applicant:

- (1) Has met the descriptions, specifications, guidelines, and requirements established by the commissioner for the grant program;
- (2) Has filed a completed application form, as determined solely by the commissioner, together with all supporting documentation required by the commissioner;
- (3) Has, in the case of a building with multiple dwellings, filed together completed grant applications for all dwellings in the building[;], for installation of wind resistive devices indicated in section 431:22-104(b)(1), (2), and (4); provided that this requirement does not apply [;]to[;] section 431:22-104(b)(3);
- (4) Has installed a wind resistive device or devices including residential safe room designs that meet the standards established by the state department of defense and that have been designated and approved by the commissioner;
- (5) Has fully paid, prior to applying for the grant, the cost of the wind resistive device or devices, as well as the installation [~~and inspection~~] costs for which the grant is sought. The grant shall be used to reimburse only these costs or a portion thereof;
- (6) Has hired an inspector, determined by the commissioner to be qualified in accordance with the requirements of the commissioner, who has verified in writing that the installation of the wind resistive device or devices is complete and is in compliance with the grant program

specifications, guidelines, and requirements, as determined by the commissioner;

- (7) Has installed the wind resistive device or devices after July 1, 2002;
- (8) Has provided any other information deemed necessary by the commissioner; and
- (9) Has met all additional requirements needed to implement the grant program as determined by the commissioner.”

SECTION 12. There is appropriated out of the hurricane reserve trust fund of the State of Hawaii the sum of \$2,000,000, or so much thereof as may be necessary for fiscal year 2005-2006, and the sum of \$2,000,000, or so much thereof as may be necessary for fiscal year 2006-2007, for the deposit into the loss mitigation grant fund.

SECTION 13. There is appropriated out of the loss mitigation grant fund of the State of Hawaii the sum of \$2,000,000, or so much thereof as may be necessary for fiscal year 2005-2006, and the sum of \$2,000,000, or so much thereof as may be necessary for fiscal year 2006-2007, for the loss mitigation grant program established under chapter 431, article 22, Hawaii Revised Statutes.

The sum appropriated in this part shall be expended by the department of commerce and consumer affairs for the purposes of this part.

#### PART IV

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 15. This Act shall take effect on July 1, 2005.

(Vetoed by Governor and veto overridden by Legislature on July 12, 2005.)

## ACT 6

S.B. NO. 1262

A Bill for an Act Relating to the Waianae Coast.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds it a matter of concern that along the Waianae coast, the growing population of west Oahu and the visitor industry are affecting the traditional uses of the area and are having cumulative economic, environmental, social, and cultural effects on the many communities along this coastline.

The legislature finds that the increased usage of beach parks and state boating facilities to accommodate commercial ocean recreation activities between Kalaeloa and Kaena has had a significant impact on traditional commercial fishing activities, as well as other non-commercial ocean recreational activities.

The legislature finds that the ocean waters in this area should be designated by the department of land and natural resources as an ocean recreation management area to reduce user conflicts, maintain overall public safety, and to regulate commercial activities by placing limitations on the locations, times, and types of ocean recreation activities that are permitted.

The purpose of this Act is to place a moratorium on the issuance of new commercial vessel permits in state small boat harbors involving ocean-related

activities for ocean waters between Kalaeloa point and Kaena point until the boundaries of a Kalaeloa to Kaena ocean recreation management area are designated and administrative rules on recreational boating activities and commercial vessel activities are adopted. However, the completion of a baseline environmental study is a prerequisite to the establishment of the boundaries of an ocean recreation management area and the adoption of the ocean recreation management area rules. The limited resources of the state prohibit funding for this baseline environmental study at this time. Accordingly, the legislature intends to seek a funding source to ensure that this important baseline environmental study is performed.

SECTION 2. The department of land and natural resources shall not issue any state small boat harbor facility commercial permits for vessels engaged in ocean use activities in the area from Kalaeloa point to Kaena point that would exceed the total number of permits already issued as of the effective date of this Act, until the boundaries of an ocean recreational management area for the area from Kalaeloa point to Kaena point are determined and ocean recreation management area rules are adopted pursuant to this section and chapter 91, Hawaii Revised Statutes.

SECTION 3. The department shall prepare a baseline environmental study as an informational document to be used for the preparation of draft ocean recreation management area rules in accordance with the following procedures. The baseline environmental study shall include:

- (1) A summary sheet with a concise description of the following:
  - (A) Significant beneficial and adverse impacts of ocean use activities in the area from Kalaeloa point to Kaena point (including cumulative impacts and secondary impacts);
  - (B) Proposed mitigation measures;
  - (C) Alternatives considered;
  - (D) Unresolved issues; and
  - (E) Compatibility with land use plans and policies, and listing of permits or approvals;
- (2) A separate and distinct section that includes a statement of purpose and need for the designation of an ocean recreation management area;
- (3) The following information, to the extent necessary for evaluation and review of the cultural, environmental, social, and economic impacts:
  - (A) A detailed map of the area from Kalaeloa point to Kaena point;
  - (B) A statement of objectives;
  - (C) A general description of the area's technical, economic, social, and environmental characteristics;
  - (D) Public funds or lands to be used for the designation;
  - (E) Phasing and timing of the designation;
  - (F) A summary of technical data, diagrams, and other information necessary to permit an evaluation of potential environmental impact by government agencies and the public; and
  - (G) A historic perspective;
- (4) The following restrictions or limitations on ocean use or private recreational activities, set forth in detail:
  - (A) Sub-areas within any proposed ocean recreation management area where certain types of ocean use activities may be restricted or permitted;
  - (B) The number of permits, by permit type and vessel and passenger capacity, that may be issued for different types of ocean use activities;

- (C) The months, days, and times that certain types of ocean use activities may be curtailed or prohibited; and
  - (D) Any other restrictions or limitations that the department deems appropriate;
- (5) A procedure for the resolution of user conflicts between commercial ocean use activities and private recreational use of any ocean recreation management area;
- (6) A rigorous exploration and objective evaluation of the environmental impacts of alternative actions. Particular attention shall be given to alternatives that might enhance environmental quality or avoid, reduce, or minimize some or all of the adverse environmental effects, costs, and risks and recreational and commercial use conflicts. Examples of alternatives include:
- (A) No action;
  - (B) Requiring actions of a significantly different nature that would provide similar benefits with different environmental effects;
  - (C) Those related to different boundaries or details of the proposed area that present different environmental effects; and
  - (D) Postponing the designation of the area pending further study.
- In each case, the analysis shall be sufficiently detailed to allow the comparative evaluation of the environmental benefits, costs, and risks of the proposed area designation and each reasonable alternative;
- (7) A description of setting of any ocean recreation management area, including a description of the environment in the vicinity of the area, as it exists before the designation of the area, from both a local and regional perspective. Special emphasis shall be placed on environmental resources that are rare or unique to the region and the area (including natural or human-made resources of historic, archaeological, or aesthetic significance). Specific reference to related land-based projects, public and private, existent or planned in the region shall also be included for purposes of examining the possible overall cumulative effects of the designation of the area. The department shall identify, where appropriate, population and growth characteristics of the affected region and any population and growth assumptions used to justify the action and determine secondary population and growth effects resulting from the proposed designation and its alternatives. In any event, it is essential that the sources of data used to identify, qualify, or evaluate any and all cultural, environmental, societal, and economic consequences be expressly noted;
- (8) A statement of the relationship of the proposed designation of the area to land use plans, policies, and controls for the affected area. Discussion of how the proposed designation may conform or conflict with objectives and specific terms of approved or proposed land use plans, policies, and controls, if any, for the area affected shall be included. Where a conflict or inconsistency exists, the baseline environmental study shall describe the extent to which the department has reconciled its proposed designation with the plan, policy, or control and the reasons why the department has decided to proceed, notwithstanding the absence of full reconciliation;
- (9) In a separate and distinct section, a description of the relationship between local short-term uses of the marine environment and the maintenance and enhancement of long-term productivity of the marine environment. The extent to which the proposed action involves trade-offs among short-term and long-term gains and losses shall be dis-

- cussed. The discussion shall include the extent to which the proposed designation forecloses future options, narrows the range of beneficial uses of the environment, or poses long-term risks to health or safety. In this context, short-term and long-term do not necessarily refer to any fixed time periods, but shall be viewed in terms of the environmentally significant consequences of the proposed action;
- (10) A discussion of the resolution of conflicts between recreational use of the area by residents of the area and commercial ocean use activities;
  - (11) In a separate and distinct section, a description of all irreversible and irretrievable commitments of resources that would be involved in the proposed designation of the ocean recreation management area should it be implemented. Identification of unavoidable effects and the extent to which the action makes use of non-renewable resources as a result of the designation or irreversibly curtails the range of potential uses of the environment shall also be included. The possibility of environmental accidents resulting from any phase of the designation and maintenance of the ocean recreation management area shall also be considered;
  - (12) All probable adverse environmental effects that cannot be avoided and a statement addressing these problems. Any adverse effects, such as water or air pollution, urban congestion, user conflicts, threats to public health, or other consequences adverse to environmental goals and guidelines established by environmental response laws, coastal zone management laws, pollution control and abatement laws, and environmental policy such as that found in chapters 128D, 205A, 342B, 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, 342P, and 344, Hawaii Revised Statutes, shall be included, including those effects discussed in other actions of this paragraph that are adverse and unavoidable under the proposed designation and rules. Also, the rationale for proceeding with a proposed designation, notwithstanding unavoidable effects, shall be clearly set forth in this section;
  - (13) Other interests and considerations of governmental policies that are thought to offset the adverse effects of the proposed designation. The baseline environmental study shall also indicate the extent to which these stated countervailing benefits could be realized by following reasonable alternatives to the proposed designation that would avoid some or all of the adverse environmental effects;
  - (14) Mitigation measures proposed to avoid, minimize, rectify, or reduce impacts and user conflicts, including provision for compensation for losses of cultural, community, historical, archaeological, and fish and wildlife resources, including the acquisition of land, waters, and interests therein. Description of any mitigation measures to reduce significant, unavoidable, or adverse effects to insignificant levels, and the basis for considering these levels acceptable shall be included. Where a particular mitigation measure has been chosen from among several alternatives, the measures shall be discussed and reasons given for the choice made. Included, where possible and appropriate, shall be specific reference to the timing of each step proposed to be taken in the mitigation process, what performance bonds, if any, may be posted, and what other provisions are proposed to ensure that the mitigation measures will, in fact, be taken;
  - (15) A separate and distinct section that summarizes unresolved issues and contains either a discussion of how the issues will be resolved prior to commencement of the designation or what overriding reasons there are for proceeding without resolving the problems;

- (16) A separate and distinct section that contains a list identifying all governmental agencies, other organizations, and private individuals consulted in the preparation of the baseline environmental study and the identity of the persons, firms, or agency assisting in the preparation of the baseline environmental study, by contract or other authorization, shall be disclosed; and
- (17) A separate and distinct section that contains reproductions of all substantive comments and responses made during the consultation process. A list of those persons or agencies who were consulted and had no comment shall be included in the baseline environmental study.

SECTION 4. The final designation of the ocean recreation management area and rules for this area shall be adopted by the department pursuant to chapter 91, Hawaii Revised Statutes, and this Act and shall include any sub-areas or restricted areas. The department shall maintain rulemaking files that shall include but not be limited to the following:

- (1) All letters received containing substantive questions, comments, or recommendations and, as applicable, summaries of any scoping meetings held;
- (2) A list of persons, organizations, and public agencies commenting on the draft rules;
- (3) The responses of the department to each substantive question, comment, or recommendation received during the rules adoption process; and
- (4) The final rules written in a format that allows the reader to easily distinguish changes made to the text of the draft rules.

SECTION 5. For the purposes of this Act, “ocean use activities” means commercial operation of thrill craft, high-speed boating, para-sailing, water sledding, sailing and snorkeling tours, glassbottom boat tours, dolphin tours, or any other similar commercial ocean recreational activity for hire.

SECTION 6. The department of land and natural resources shall submit the baseline environmental study to the legislature not later than twenty days prior to the convening of the regular session of 2007.

(Vetoed by Governor and veto overridden by Legislature on July 12, 2005.)

## ACT 7

S.B. NO. 1473

A Bill for an Act Relating to Waimano Ridge.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that certain uses of state-owned lands in the Waimano ridge area of Oahu have created unnecessary friction between the state administration and the surrounding community residents. Over the past five years, the state administration has systematically increased the use of state-owned lands in the Waimano ridge area in ways that have disenfranchised the surrounding community residents and placed them in potential harm’s way.



In 2000, the state administration announced that it would be operating a juvenile sex offender treatment facility at the site of the former Waimano home for the developmentally disabled. The announcement was given without prior notice to the community. In fact, there are reports that the department of health selected the site as early as 1998, without informing the community of its intentions.

After consistent public pressure, the state administration consented to holding public hearings in the Waimano ridge community. After receiving overwhelming community opposition to the project, then-governor Cayetano promised the Waimano ridge community that the siting of the treatment facility would only be temporary.

In 2001, in anticipation of Governor Cayetano proceeding with the relocation of the sex offender treatment facility, the legislature appropriated funds to move the treatment facility to another location. However, the move never occurred, leaving area residents to believe that they had been misled.

In 2003, rather than follow through with the administration's promise to relocate the facility, the department of health announced that it planned on expanding the facility and its uses to include a drug treatment center. The administration also stated that it would not guarantee that the juvenile sex offender treatment center would ever be relocated.

More recently, testing of viruses and other potentially dangerous specimens have occurred at the department of health's laboratory located on state-owned Waimano ridge lands. While the original master plan for the area did envision the laboratory being built there, area residents were led to believe that the laboratory was to be used primarily to test water quality and food samples. Due to the heightened state of terrorism awareness and recent outbreaks of Norovirus, West Nile virus, and bird flu, testing for these potentially fatal diseases have been occurring without the knowledge of area residents. In fact, the Waimano community has not been briefed by the department of health on the safety protocols it is using to safeguard the health and safety of the surrounding community, nor has the department been forthcoming in exactly what it is testing in its laboratory.

The legislature also finds that all these potentially dangerous activities are being conducted within a close proximity to public schools. These activities place children at risk, and the legislature believes that the concerns of these students and their parents have gone unheeded by the department of health and the state administration for too long.

The legislature further finds that in the early 1990s, there was a collaborative government and community effort to establish a master plan for the Waimano ridge area. This master plan was formulated by the department of health with community input and was designed to create a "totally integrated community" where activities on the state-owned Waimano ridge lands would be community-friendly. Unfortunately, the legislature finds that the department of health and the state administration have strayed from the original intent of the master plan and have approved uses of the Waimano ridge lands without the consent of and without regard to the Waimano community. As such, the legislature finds it necessary to arrest the development of the state-owned Waimano ridge lands until such time as the department of health and the area residents can come to an accord on its use.

The legislature further finds that the jurisdiction of the department of health over the Waimano ridge area lands was conferred pursuant to Executive Order No. 1020, dated May 10, 1943, as amended by Executive Order No. 1319, dated March 30, 1949, as amended by Executive Order No. 1334, dated July 14, 1949, as amended by Executive Order No. 2273, dated May 2, 1966, as amended by Executive Order No. 2287, dated September 7, 1966. Article XI, section 5 of the state constitution provides that the "legislative power over the lands owned by or under the control of the State and its political subdivisions shall be exercised only by

general laws, *except in respect to transfers . . . for the use of the State, or a political subdivision, or any department or agency thereof.*” (emphasis added). Therefore, your Committee further finds that the Waimano ridge lands are subject to legislation to regulate the use of those lands, since those lands are state-owned and are used by the department of health.

The purpose of this Act is to require the department of health to:

- (1) Give prior notice to the local neighborhood board and the members of the legislature from the affected districts and obtain approval of the governor for any use of state-owned land under its jurisdiction in the Waimano ridge area prior to use of the land as a sex offender treatment facility, drug treatment facility, state laboratory, or any other uses; and
- (2) Prepare an updated master plan for the Waimano ridge lands.

SECTION 2. Chapter 171, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

**“§171- Nonconventional uses; department of health; approval and authorization; Waimano ridge.** The department of health shall provide at least ninety days notification to the affected neighborhood boards and legislators that represent the district where Waimano ridge is located, and obtain the approval of the governor prior to new uses or the expanded use of the land as a sex offender treatment facility, drug treatment facility, state laboratory, or other uses.”

SECTION 3. (a) The department of health, in consultation with the department of land and natural resources, residents of Pearl City, the Pearl City Community Association, and Pearl City Neighborhood Board No. 21, shall prepare an updated master plan for the future use of the state-owned Waimano ridge lands.

(b) The department of health shall conduct not less than two public hearings, duly noticed at least two weeks in advance, in the Waimano ridge community to obtain public input on formulating the updated master plan. The department of health shall incorporate any recommendations, to the extent practicable, for changes or additions to the master plan as submitted by the Pearl City Community Association or Pearl City Neighborhood Board No. 21. The department of health shall submit an updated master plan to the legislature at the next regular session of the legislature.

SECTION 4. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on July 1, 2005.

(Vetoed by Governor and veto overridden by Legislature on July 12, 2005.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 8**

S.B. NO. 1592

A Bill for an Act Relating to State Planning.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Hawaii is a unique and beautiful state. For many, it is the ideal place to live and is second to none for providing a preferred quality of life.

However, to improve or even maintain the quality of life in this State, the legislature finds that planning the overall theme and goals of the State is important to our future success.

The legislature realizes that there are many real, serious, and immediate problems that our State faces on an annual basis. While it is the government's responsibility to resolve those issues, it is also government's responsibility to keep a watchful eye on the future and guide the State in the right direction for succeeding generations.

Thus, the legislature believes that the time has come to review the precepts of the Hawaii state plan and other fundamental components of community planning. Specifically, many quality-of-life issues, including water quality, air quality, land use, energy, and ocean resources, are important to the people of Hawaii and should be the focus for planning Hawaii's future.

The purpose of this Act is to:

- (1) Establish a Hawaii 2050 task force to review the Hawaii state plan and other fundamental components of community planning, and to develop recommendations on creating the Hawaii 2050 sustainability plan; and
- (2) Require the auditor to prepare the Hawaii 2050 sustainability plan to define and implement state goals, objectives, policies, and priority guidelines, incorporating some or all of the recommendations of the Hawaii 2050 task force;

to aid in the future long-term development of the State.

**SECTION 2. Hawaii 2050 task force; establishment; membership; appointment; compensation; duties.** (a) There is established a Hawaii 2050 task force to review the Hawaii state plan and other fundamental components of community planning.

The task force shall consist of twenty-five members as follows:

- (1) Four members from the senate appointed by the senate president;
- (2) Four members from the house of representatives appointed by the speaker of the house of representatives;
- (3) A representative of the governor appointed by the governor;
- (4) The director of the state office of planning or the director's designee;
- (5) The auditor or the auditor's designee;
- (6) Two members from the University of Hawaii's school of urban and regional planning to be appointed by the president of the University of Hawaii; and
- (7) Three members from each county, with at least one member from each county being the departmental director of the appropriate county planning department or agency or the director's designee; provided that the mayor of each county shall appoint the representatives for each respective county.

(b) The state office of planning shall assist the task force in performing its duties as required under this Act. In carrying out its duties under this Act, the task force may also request staff assistance from the department of budget and finance; department of business, economic development, and tourism; department of transportation; department of land and natural resources; and other appropriate state and county agencies.

(c) The members of the task force shall select the chairperson of the task force and shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(d) The task force shall review, solicit input on, and develop recommendations for the creation of the Hawaii 2050 sustainability plan to ensure its relevance as

a guide for the future long-term development of the State and report to the legislature and the governor on creating the plan. The task force shall also submit recommendations that include but are not limited to:

- (1) Whether the goals, objectives, policies, and priorities for the State as envisioned in the Hawaii state plan and the quality growth policy developed pursuant to chapter 223, Hawaii Revised Statutes, are in need of amendment;
- (2) Whether the existing bases for determining priorities; allocating limited resources, such as public funds, services, human resources, land, energy, water, and other resources; and improving coordination of federal, state, and county plans, policies, programs, projects, and regulatory activities are adequate and, if not, a recommendation on how to improve them;
- (3) A listing of Hawaii's inherent economic assets and how best to use those assets to define Hawaii's role in the global economy;
- (4) How to forecast vocational needs within the State and direct the education and training of Hawaii's workforce to ensure that Hawaii residents learn marketable skills in secondary school, university, and adult training programs;
- (5) The development of a framework to ensure that traffic congestion, pollution, and other adverse effects caused by population and economic growth are mitigated;
- (6) An assessment of the tools needed for the private sector to better compete in the global economy and the means to improve Hawaii's balance of trade by increasing exports and reducing imports, and whether these tools would have any adverse economic or environmental impact on the State and its residents; and
- (7) How best to engage the community in a public discussion to achieve a consensus on the State's preferred future, and coordinate the actions needed to sustain a growing and vibrant economy, while maintaining a high quality of life for all residents and visitors.

The task force shall develop criteria or benchmarks as necessary to assist in the development of measuring incremental compliance with task force recommendations enacted into law or adopted as policies by governmental agencies and in guiding budgetary priorities.

**SECTION 3. Report.** The task force shall submit a report on its recommendations, including any implementing legislation, to the legislature and to the auditor no later than twenty days before the convening of the regular session of 2006.

**SECTION 4. Hawaii 2050 sustainability plan.** (a) After receipt of the task force's report, the office of the auditor shall prepare the Hawaii 2050 sustainability plan. The plan shall be prepared to define and implement state goals, objectives, policies, and priority guidelines using sections 226-3 to 226-27, Hawaii Revised Statutes, as guiding principles. The auditor shall seek input from all state departments. The auditor shall also solicit public views and concerns in preparation of the plan and shall incorporate all or a portion of the recommendations reported by the Hawaii 2050 task force.

The plan shall serve as a guideline for funding and implementation by state and county agencies. The office of planning shall assist the auditor in reviewing the plan.

(b) The auditor shall submit the sustainability plan to the legislature no later than twenty days before the convening of the regular session of 2007.

(c) The auditor, with the assistance of the office of planning, shall update the plan every ten years and report to the legislature.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$25,000 or so much thereof as may be necessary for fiscal year 2005-2006 and the same sum or so much thereof as may be necessary for fiscal year 2006-2007 for the review and recommendations of the Hawaii state plan and other fundamental components of community planning to be performed by the Hawaii 2050 task force.

The sums appropriated shall be expended by the office of the auditor for the purposes of this Act.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$75,000 or so much thereof as may be necessary for fiscal year 2005-2006 and the same sum or so much thereof as may be necessary for fiscal year 2006-2007 for creating the Hawaii 2050 sustainability plan.

The sums appropriated shall be expended by the office of the auditor for the purposes of this Act.

SECTION 7. The Hawaii 2050 task force shall cease to operate after the adjournment sine die of the 2007 regular session of the legislature.

SECTION 8. This Act shall take effect on July 1, 2005.

(Vetoed by Governor and veto overridden by Legislature on July 12, 2005.)

## ACT 9

S.B. NO. 1685

A Bill for an Act Relating to Tax.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that allowing the counties to obtain state taxpayer information within their jurisdiction is an important resource to strengthen county tax collection efforts. Presently, the counties are unable to audit their own tax exemptions and credits for resident filings within their own counties. With access to state tax information, such as taxpayers filing as residents in a particular county, the counties would be able to follow up on discrepancies with their property tax exemptions and credits.

Counties such as Maui are having difficulty determining whether real property tax filers claiming apartment or condominium classification should be reclassified as a hotel. There have been numerous complaints about hotel activities in apartments and condominiums; however, the county is unable to access the transient accommodations tax information that would provide the necessary and helpful information about tax filers within their county.

The purpose of this Act is to authorize the director of taxation and county tax officials to share taxpayer information.

SECTION 2. Chapter 246A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§246A- Reciprocal supplying of tax information.** Notwithstanding any other law to the contrary, a tax official of any county of the State may disclose

any records relating to the administration of real property taxes to any duly accredited tax official of the State for tax purposes.”

SECTION 3. Section 231-18, Hawaii Revised Statutes, is amended to read as follows:

**“§231-18 Federal or other tax officials permitted to inspect returns; reciprocal provisions.** Notwithstanding the provisions of any law making it unlawful for any person, officer, or employee of the State to make known information imparted by any tax return or permit any tax return to be seen or examined by any person, it shall be lawful to permit a duly accredited tax official of the United States [~~or of~~], any state or territory, any county of this State, or the Multistate Tax Commission to inspect any tax return of any taxpayer, or to furnish to [~~such~~] an official, commission, or the authorized representative thereof an abstract of the return or supply the official, commission, or the authorized representative thereof with information concerning any item contained in the return or disclosed by the report of any investigation of the return or of the subject matter of the return for tax purposes only. The Multistate Tax Commission may make [~~such~~] the information available to a duly accredited tax official of the United States [~~or to a duly accredited tax official of~~], any state or territory, or the authorized representative thereof, for tax purposes only.”

SECTION 4. Section 235-117, Hawaii Revised Statutes, is amended to read as follows:

**“§235-117 Reciprocal supplying of tax information.** Notwithstanding section 235-116, the department [~~of taxation~~] may permit the Secretary of the Treasury of the United States, the Commissioner of Internal Revenue, the Multistate Tax Commission, or the proper officer of any state or territory imposing an income tax upon incomes of persons taxable under this chapter, or any county of this State, or the authorized representatives thereof to inspect the income tax returns and estimates of any such person for tax purposes only. The department may also furnish to [~~such~~] these authorized persons an abstract of an income tax return or estimate or supply [~~such~~] these persons with information concerning any item of income contained in a return or disclosed by the report of an investigation of the income or return of a taxpayer. The Multistate Tax Commission may make [~~such~~] the information available to a duly accredited tax official of the United States [~~or to a duly accredited tax official of~~], any state or territory, or the authorized representative thereof, for tax purposes only.”

SECTION 5. Section 237D-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All tax returns and return information required to be filed under this chapter, and the report of any investigation of the return or of the subject matter of the return, shall be confidential. It shall be unlawful for any person or any officer or employee of the State to intentionally make known information imparted by any tax return or return information filed pursuant to this chapter, or any report of any investigation of the return or of the subject matter of the return, or to wilfully permit any [~~such~~] return, return information, or report so made, or any copy thereof, to be seen or examined by any person; provided that for tax purposes only the taxpayer, the taxpayer’s authorized agent, or persons with a material interest in the return, return information, or report may examine them. Unless otherwise provided by law,

persons with a material interest in the return, return information, or report shall include:

- (1) Trustees;
- (2) Partners;
- (3) Persons named in a board resolution or a one per cent shareholder in case of a corporate return;
- (4) The person authorized to act for a corporation in dissolution;
- (5) The shareholder of an S corporation;
- (6) The personal representative, trustee, heir, or beneficiary of an estate or trust in case of the estate's or decedent's return;
- (7) The committee, trustee, or guardian of any person in paragraphs (1) to (6) who is incompetent;
- (8) The trustee in bankruptcy or receiver, and the attorney-in-fact of any person in paragraphs (1) to (7);
- (9) Persons duly authorized by the State in connection with their official duties;
- (10) Any duly accredited tax official of the United States [~~or of~~], any state or territory[;], or of any county of this State;
- (11) The Multistate Tax Commission or its authorized representative; and
- (12) Members of a limited liability company.

Any violation of this subsection shall be a misdemeanor. Nothing in this subsection shall prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items of the reports or returns."

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect upon its approval.

(Vetoed by Governor and veto overridden by Legislature on July 12, 2005.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 10**

S.B. NO. 1772

A Bill for an Act Relating to Employers.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that many employees at large companies are paid low wages and qualify for government programs for the poor and near poor. If large employers do not fully cover the cost of health care coverage for their employees, taxpayers are often forced to pay the cost. The children of these low-paid workers qualify for government benefits under medicaid and the state children's health insurance program because most of these employees are low-wage workers.

For example, in Georgia, more than ten thousand children of Wal-Mart employees were enrolled in Georgia's public health insurance program for children, PeachCare, according to a 2002 state government study. The number of Wal-Mart employees' children enrolled in the program far exceeded the number of children of any other employer. Wal-Mart's failure to cover these children cost federal and state

taxpayers an estimated \$6,600,000. In Washington, Wal-Mart had four hundred fifty-three children, the highest in Washington, enrolled in medicaid in 2002.

The purpose of this Act is to enable the State to determine which employers are shifting the responsibility for providing health care coverage for their workers to taxpayers.

SECTION 2. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§346- Medical assistance application information; annual report; public disclosure.** (a) Each applicant for medical assistance under any program administered by the department shall identify the employer of the proposed beneficiary of medical assistance. If the proposed beneficiary is unemployed, the applicant for medical assistance shall identify the employer of any adult who is responsible for providing all or some of the proposed beneficiary’s support.

For the purposes of this section, “proposed beneficiary” means any person who files an application for health care benefits or hospital care for the person, or any other individual on whose behalf an application is filed, including children or other dependents of the applicant.

(b) Before October 1 of each year, the department shall submit to the legislature a written annual report identifying all employers identified pursuant to subsection (a) who employ twenty-five or more beneficiaries of medical assistance programs administered by the department. In determining whether the twenty-five-employee threshold is met, the department shall include all beneficiaries employed by the employer and its subsidiaries at all locations within the state. In the event the department requires assistance to ascertain information, such as an employer’s subsidiaries or location, the department shall consult with the department of commerce and consumer affairs. The report shall include:

- (1) Each employer’s name and names of subsidiaries, if appropriate, that employ beneficiaries of department medical assistance programs;
- (2) The location of the employer;
- (3) For each department medical assistance program, the total number of the employer’s employees and dependents who are enrolled in the program; and
- (4) The total cost to the State per year of providing medical assistance benefits for the employees and enrolled dependents of each identified employer.

The report shall not include the name of any individual medical assistance program beneficiary and shall be subject to applicable privacy standards established under federal Medicaid regulations and the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191.

(c) The department shall make the annual report available to the public through any means the director deems appropriate.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Vetoed by Governor and veto overridden by Legislature on July 12, 2005.)

**Note**

1. Edited pursuant to HRS §23G-16.5.



## ACT 11

S.B. NO. 1808

A Bill for an Act Relating to Workers' Compensation Law.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 386-1, Hawaii Revised Statutes, is amended by adding eleven new definitions to be appropriately inserted and to read as follows:

““Able to resume work” means an industrially injured worker’s injury has stabilized after a period of recovery and the worker is capable of performing work in an occupation for which the worker has received previous training or for which the worker has demonstrated aptitude.

“Attending physician” means a physician who is primarily responsible for the treatment of a work injury. There shall not be more than one attending physician. If an injured employee is treated by more than one physician, the employee shall designate a physician as the attending physician.

“Day” or “days” means working days, unless otherwise provided.

“Disciplinary action” means personnel action by an employer in the form of punishment against an employee for infraction of employer or contract rules, in the form of a reprimand, suspension, or discharge.

“Emergency medical services” means the delivery of health care services under emergency conditions occurring as the result of a patient’s condition due to a work injury that manifests itself by symptoms of sufficient severity, including severe pain, such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to be life-threatening or cause serious harm or aggravation of physiological or psychological sickness, injury, or incapacitation.

“Good cause” means a substantial reason amounting in law to be a legal excuse for failing to perform an act required by law considered under the circumstances of the individual case.

“Guide” or “guidelines” means an indication of a suggested criteria, course, or means to a particular end, and not an authoritative or exclusive prescription which limits the exercise of independent judgment, expertise, or care.

“Suitable gainful employment” means employment or self-employment within the geographical area where the employee resides, which is reasonably attainable and which offers an opportunity to restore the employee’s earnings capacity as nearly as possible to that level which the employee was earning at the time of injury and to return the employee to the active labor force as quickly as possible in a cost-effective manner, giving due consideration to the employee’s qualifications, interests, incentives, future earnings capacity, and the present and future labor market.

“Usual and customary employment” means the line or type of work in the gainful employment market consistent with a claimant’s background, training, and experience.

“Vocational rehabilitation plan” means an approved plan prepared by a certified rehabilitation provider with an employee that is designed to assist the employee in obtaining and maintaining suitable gainful employment.

“Vocational rehabilitation services” means services provided in a rehabilitation program to assist an employee in obtaining and maintaining suitable gainful employment that may include but shall not be limited to on-the-job training, job modification, vocational evaluation, adjustment to disability, counseling, guidance, vocational and personal adjustment, referrals, transportation, training, supplies, equipment, appliances, aid, occupational licenses, and other goods and services

needed to assist an employee in obtaining and maintaining suitable gainful employment.”

SECTION 2. Section 371-7, Hawaii Revised Statutes, is amended to read as follows:

**“§371-7 Duties and powers of the department; rules and<sup>1</sup> [regulations], procedure for varying.** In addition to [~~such~~] any other duties and powers as may be conferred upon the department of labor and industrial relations by law, the department shall:

- (1) File with the governor a written report or reports at [~~such~~] times, at least once in each year, and in [~~such~~] a form as shall be requested by the governor covering the condition and activities of the department;
- (2) Make, modify, and repeal reasonable rules [~~and regulations~~] of general application for the protection of life, health, and safety of employees in every employment or place of employment; provided that the rules [~~and regulations~~] shall not conflict with any rules [~~or regulations~~] of the department of health covering the same subject matter; provided further that rules pertaining to any workers' compensation case arising under chapter 386 shall be adopted or amended as specified in section 386-72; and
- (3) Make, modify, and repeal such other reasonable rules [~~and regulations~~] of general application as may be necessary to carry into effect this chapter.

The rules [~~and regulations~~] of the department and any amendments thereto, when adopted in accordance with chapter 91, shall have the force and effect of law and shall be enforced in the same manner as this chapter.

If there are practical difficulties or unnecessary hardships in carrying out a rule, the director of labor and industrial relations [~~may~~], after public hearing, may make a variation from [~~such~~] the requirement if the spirit of the rule is observed. Any person affected by the rule, or the person's agent, may petition for variation, stating the grounds therefor. The director shall fix a day for a hearing on the petition and give reasonable notice thereof to the petitioner. A properly indexed record of all variations made shall be kept in the office of the department and shall be open to public inspection.

Any interested person may obtain a ruling as to the validity or applicability of any rule in the manner provided in chapter 91.”

SECTION 3. Section 371-8, Hawaii Revised Statutes, is amended to read as follows:

**“§371-8 Duties and powers of director; enforcement of rules.** In addition to [~~such~~] any other duties and powers as may be conferred upon the director by law, the director of labor and industrial relations shall:

- (1) Supervise and direct the operations and functions of the department of labor and industrial relations;
- (2) Cause the enforcement of rules [~~and regulations~~]; and
- (3) Propose [~~such~~] rules [~~and regulations~~] or changes in rules [~~and regulations~~], as the director deems advisable for the protection of life, health, and safety of employees, in every employment or place of employment[-]; provided that rules pertaining to workers' compensation cases arising under chapter 386 shall be adopted or amended as specified in section 386-72. The director may appoint committees composed of

employers, employees, and experts to suggest rules [~~and regulations~~] or changes therein.

The director may make, amend, and repeal rules necessary for the internal administration of the department and for the proper conduct of hearings before the director or the director's authorized agents under this section. The director shall not be bound by technical rules of evidence in the conduct of [~~such~~] these hearings.''

SECTION 4. Section 386-25, Hawaii Revised Statutes, is amended to read as follows:

**“§386-25 Vocational rehabilitation.** (a) The purposes of vocational rehabilitation are to restore an injured worker's [~~earning~~] earnings capacity as nearly as possible to that level [~~which~~] that the worker was earning at the time of injury and to return the injured worker to suitable [~~work~~] gainful employment in the active labor force as quickly as possible in a cost-effective manner.

(b) The director may refer employees who may have or have suffered permanent disability as a result of work injuries and who, in the director's opinion, can be vocationally rehabilitated to the department of human services or to private providers of rehabilitation services for vocational rehabilitation services that are feasible. A referral shall be made upon recommendation of the rehabilitation unit established under section 386-71.5 and after the employee has been deemed physically able to participate in rehabilitation by the employee's attending physician. The unit shall include appropriate professional staff and shall have the following duties and responsibilities:

- (1) To review and approve rehabilitation plans developed by certified providers of rehabilitation services, whether they be private or public;
- (2) To adopt rules consistent with this section [~~which~~] that shall expedite and facilitate the identification, notification, and referral of industrially injured employees to rehabilitation services, and establish minimum standards for providers providing rehabilitation services under this section;
- (3) To certify private and public providers of rehabilitation services meeting the minimum standards established under paragraph (2); and
- (4) To enforce the implementation of rehabilitation plans.

(c) Enrollment in a rehabilitation plan or program shall not be mandatory and the approval of a proposed rehabilitation plan or program by the injured employee shall be required. The injured employee may select a certified provider of rehabilitation services. Both the certified provider and the injured employee, *within* a reasonable time after initiating rehabilitation services, shall give proper notice of selection to the employer.

(d) A provider shall submit an initial evaluation report of the employee to the employer and the director within forty-five days of the date of referral or selection. The evaluation shall determine whether the employee requires vocational rehabilitation services to return to suitable gainful employment, identify the necessary services, and state whether the provider can provide these services. The initial evaluation report shall contain:

- (1) An assessment of the employee's:
  - (A) Current medical status;
  - (B) Primary disability;
  - (C) Secondary disability;
  - (D) Disabilities that are not related to the work injury; and
  - (E) Physical or psychological limitations or both.

If this information is not provided by the treating physician within a reasonable amount of time, information from another physician shall be accepted;

- (2) A job analysis addressing the demands of the employee's employment;
- (3) A statement from the provider identifying the employee's vocational handicaps in relation to the employee's ability to:
  - (A) Return to usual and customary employment; and
  - (B) Participate in and benefit from a vocational rehabilitation program;
- (4) A statement from the provider determining the feasibility of vocational rehabilitation services, including:
  - (A) The provider's ability to assist the employee in the employee's efforts to return to suitable gainful employment;
  - (B) An outline of specific vocational rehabilitation services to be provided, justification for the necessity of services, and how the effectiveness of these services is measured; and
  - (C) How the vocational rehabilitation services directly relate to the employee obtaining suitable gainful employment; and
- (5) The enrollment form and the statement of worker's rights and responsibilities form obtained from the department.

(e) A provider shall file the employee's plan with the approval of the employee. Upon receipt of the plan from the provider, an employee shall have ten days to review and sign the plan. The plan shall be submitted to the employer and the employee and be filed with the director within two days from the date of the employee's signature. A plan shall include a statement of the feasibility of the vocational goal, using the process of:

- (1) First determining if the employee's usual and customary employment represents suitable gainful employment, and, should it not;
  - (2) Next determining if modified work or other work with a different employer represents suitable gainful employment, and, should it not;
  - (3) Next determining if modified or other employment with a different employer represents suitable gainful employment, and finally, should it not;
  - (4) Then providing training to obtain employment in another occupational field.
- (f) A plan may be approved by the director; provided the plan includes:
- (1) A physician's assessment of the employee's physical limitations, psychological limitations, and ability to return to work. If this information is not provided by the treating physician within a reasonable amount of time, information from another physician shall be accepted;
  - (2) A labor market survey indicating there are reasonable assurances that the proposed occupation for which the employee is to be placed or trained is readily available in the community when placement begins, or there are assurances of reemployment by the employer;
  - (3) A job analysis of the proposed occupation, setting forth its duties, responsibilities, physical demands, environmental working conditions, specific qualifications needed for entry-level employment, reasonable accommodations, expected estimated earnings, and other relevant information;
  - (4) The nature and extent of the vocational rehabilitation services to be provided, including:
    - (A) Specific services to be provided;
    - (B) Justification for the necessity of the services;
    - (C) Estimated time frames for delivery of services;

- (D) The manner in which the effectiveness of these services is to be measured;
- (E) Criteria for determining successful completion of the vocational rehabilitation plan; and
- (F) The employee's responsibilities;
- (5) A report of tests and copies thereof that have been administered to the employee, including a statement regarding the need for and use of the tests to identify a vocational goal;
- (6) If retraining, including on-the-job training, is found to be necessary, the estimated cost of retraining, a description of specific skills to be learned or knowledge acquired with specific time periods and clearly defined measurements of success, and the nature, amount, and duration of living expenses;
- (7) The total cost of the plan; and
- (8) The employee's approval of the plan.
- (g) The employer shall have ten calendar days from the postmark date on which the plan was mailed to submit in writing to the director any objections to the plan.

(h) The director may approve a plan that does not include all of the requirements outlined in subsection (f); provided that the director finds the plan:

- (1) Is in the best interest of the employee;
- (2) Contains reasonable assurances that the employee will be placed in suitable gainful employment; and
- (3) Has been approved by the employee.

(i) If the plan requires the purchase of any tools, supplies, or equipment, the purchase deadline shall be included in the plan. Tools, supplies, and equipment shall be considered to be the property of the employer until the plan is determined by the director to be successfully completed, after which it shall become the property of the employee. If the plan requires the purchase, etc., the employer shall purchase the items prior to the purchase deadline in the plan.

(j) An employee with an approved plan who is determined as able to return to usual and customary employment may choose to complete the plan or request a new plan of which the goal may be the employee's usual and customary employment.

~~[(d)]~~ (k) An injured employee's enrollment in a rehabilitation plan or program shall not affect the employee's entitlement to temporary total disability compensation if the employee earns no wages during the period of enrollment. If the employee receives wages for work performed under the plan or program, the employee shall be entitled to temporary total disability compensation in an amount equal to the difference between the employee's average weekly wages at the time of injury and the wages received under the plan or program, subject to the limitations on weekly benefit rates prescribed in section 386-31(a). The employee shall not be entitled to ~~[such]~~ temporary total disability compensation for any week during this period where the wages equal or exceed the average weekly wages at the time of injury.

~~[(e)]~~ (l) The director shall adopt rules for additional living expenses necessitated by the rehabilitation program, together with all reasonable and necessary vocational training.

~~[(f)]~~ (m) If the rehabilitation unit determines that vocational rehabilitation is not possible or feasible, it shall certify ~~[such]~~ the determination to the director.

(n) Except as otherwise provided, determinations of the rehabilitation unit shall be final unless a written request for reconsideration is filed with the rehabilitation unit within ten calendar days of the date of the determination.

The rehabilitation unit shall issue a reconsideration determination to affirm, reverse, or modify the determination or refer the request for reconsideration for hearing.

(o) A reconsideration determination shall be final unless a written request for hearing is filed within ten calendar days from the date of the reconsideration determination. All hearings shall be held before a hearing officer designated by the director. A written decision shall be issued in the name of the director.

~~(g)~~ (p) The eligibility of any injured employee to receive other benefits under this chapter shall in no way be affected by the employee's entrance upon a course of vocational rehabilitation as herein provided.

~~(h)~~ (q) Vocational rehabilitation services for the purpose of developing a vocational rehabilitation plan may be approved by the director and the director may periodically review progress in each case."

SECTION 5. Section 386-26, Hawaii Revised Statutes, is amended to read as follows:

**“§386-26 Guidelines on frequency of treatment and reasonable utilization of health care and services.** The director shall issue guidelines for the frequency of treatment and for reasonable utilization of medical care and services by health care providers that are considered necessary and appropriate under this chapter. The guidelines shall not be considered as an authoritative prescription for health care, nor shall they preclude any health care provider from drawing upon the health care provider's medical judgment and expertise in determining the most appropriate care.

The guidelines shall be adopted pursuant to chapter 91 and shall not interfere with the injured employee's rights to exercise free choice of physicians under section 386-21.

In addition, the director shall adopt updated medical fee schedules referred to in section 386-21, and where deemed appropriate, shall establish separate fee schedules for services of health care providers as defined in section 386-1 to become effective no later than June 30, 1986, in accordance with chapter 91.”

SECTION 6. Section 386-31, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Temporary total disability. Where a work injury causes total disability not determined to be permanent in character, the employer, for the duration of the disability, but not including the first three calendar days thereof, shall pay the injured employee a weekly benefit at the rate of sixty-six and two-thirds per cent of the employee's average weekly wages, subject to the limitations on weekly benefit rates prescribed in subsection (a), or if the employee's average weekly wages are less than the minimum weekly benefit rate prescribed in subsection (a), at the rate of one hundred per cent of the employee's average weekly wages.

If an employee is unable to complete a regular daily work shift due to a work injury, the employee shall be deemed totally disabled for work for that day.

The employer shall pay temporary total disability benefits promptly as they accrue to the person entitled thereto without waiting for a decision from the director, unless ~~such~~ this right is controverted by the employer in the employer's initial report of industrial injury. The first payment of benefits shall become due and shall be paid no later than on the tenth day after the employer has been notified of the occurrence of the total disability, and thereafter the benefits due shall be paid weekly except as otherwise authorized pursuant to section 386-53.

The payment of ~~[such]~~ these benefits shall only be terminated upon order of the director or if the employee is able to resume work. When the employer is of the opinion that temporary total disability benefits should be terminated because the injured employee is able to resume work, the employer shall notify the employee and the director in writing of an intent to terminate ~~[such]~~ the benefits at least two weeks prior to the date when the last payment is to be made. The notice shall give the reason for stopping payment and shall inform the employee that the employee may make a written request to the director for a hearing if the employee disagrees with the employer. Upon receipt of the request from the employee, the director shall conduct a hearing as expeditiously as possible and render a prompt decision as specified in section 386-86. If the employee is unable to perform light work, if offered, temporary total disability benefits shall not be discontinued based solely on the inability to perform or continue to perform light work.

An employer or insurance carrier who fails to comply with this section shall pay not more than \$2,500 into the special compensation fund upon the order of the director, in addition to other penalties prescribed in section 386-92.

- (1) ~~[In any case where]~~ If the director determines, based upon a review of medical records and reports and other relevant documentary evidence, that an injured employee's medical condition may be stabilized and the employee is unable to return to the employee's regular job, the director shall issue a preliminary decision regarding the claimant's entitlement and limitation to benefits and rights under Hawaii's workers' compensation laws. The preliminary decision shall be sent to the affected employee and the employee's designated representative and the employer and the employer's designated representative and shall state that any party disagreeing with the director's preliminary findings of medical stabilization and work limitations may request a hearing within twenty days of the date of the decision. The director shall be available to answer any questions during the twenty-day period from the injured employee and affected employer. If neither party requests a hearing challenging the director's finding the determination shall be deemed accepted and binding upon the parties. In any case where a hearing is held on the preliminary findings, any person aggrieved by the director's decision and order may appeal under section 386-87.

A preliminary decision of the director shall inform the injured employee and the employer of the following responsibilities, benefits, and limitations on vocational rehabilitation benefits ~~[which]~~ that are designed to facilitate the injured employee's early return to suitable gainful employment:

- (A) That the injured employee may invoke the employee's rights under section 378-2, 378-32, or 386-142, or all of them, in the event of unlawful discrimination or other unlawful employment practice by the employer~~[-];~~ and
  - (B) That after termination of temporary total disability benefits, an injured employee who resumes work may be entitled to permanent partial disability benefits, which if awarded, shall be paid regardless of the earnings or employment status of the disabled employee at the time.
- (2) ~~[In any case in which]~~ If the rehabilitation unit determines that an injured employee is not a feasible candidate for rehabilitation and that the employee is unable to resume the employee's regular job, it shall promptly certify the same to the director. Soon thereafter, the director shall conduct a hearing to determine whether the injured employee

remains temporarily totally disabled, or whether the employee is permanently partially disabled, or permanently totally disabled.”

SECTION 7. Section 386-72, Hawaii Revised Statutes, is amended to read as follows:

**“§386-72 Rulemaking powers.** In conformity with and subject to chapter 91, the director of labor and industrial relations shall make rules, not inconsistent with this chapter, which the director deems necessary for or conducive to its proper application and enforcement[-]; provided that the rules were adopted prior to January 1, 2005. No rules adopted or amended on or after January 1, 2005, pertaining to any workers’ compensation standard or procedure arising under this chapter shall have the force and effect of law; provided, however, that annual updates in the medical fee schedules specific to the amount paid to medical providers as provided in section 386-21(c) may be made consistent with this chapter.”

SECTION 8. Section 386-86, Hawaii Revised Statutes, is amended to read as follows:

**“§386-86 Proceedings upon claim[.]; hearings.** (a) If a claim for compensation is made, the director shall make such further investigation as deemed necessary and render a decision within sixty days after the conclusion of the hearing awarding or denying compensation, stating the findings of fact and conclusions of law. The director may extend the due date for decisions for good cause provided all parties agree. The decision shall be filed with the record of the proceedings and a copy of the decision shall be sent immediately to each party.

(b) The hearing shall be informal and shall afford the parties a full and fair opportunity to present the facts and evidence to be considered. Hearings under this section shall not be subject to chapter 91. No stenographic or tape recording shall be allowed.

(c) The order of presentation shall not alter the burden of proof, including the burden of producing evidence and the burden of persuasion. The party or parties who bear these burdens shall be determined by law consistent with the purposes of this section.

(d) Should the injured employee or injured employee’s representative, or the employer or employer’s representative fail to appear at the hearing, the director may issue a decision based on the information on file. The decision shall be final unless appealed pursuant to section 386-87. In all other circumstances, a decision shall not be rendered by the director without a hearing, which may not be waived by the parties.

(e) For the purpose of obtaining any matter, not privileged, which is relevant to the subject matter involved in the pending action, the director, upon application and for good cause shown, may order the taking of relevant testimony by deposition, upon oral examination, or written interrogatories, or by other means of discovery in the manner and effect prescribed by the Hawaii rules of civil procedure; provided that when the claimant’s deposition is taken, the employer shall pay for the cost to the claimant of attending the deposition, any costs associated with having the deposition transcribed and copied, and any and all reasonable attorney’s fees and costs incurred by the claimant with respect to the deposition.

(f) Subpoenas requiring the attendance of witnesses at a hearing before a hearings officer or for the taking of a deposition or the production of documentary evidence from any place within the State at any designated place of hearing may be issued by the director or a duly authorized representative. The employer shall serve a claimant with a copy of a medical record subpoena unless the employer has



previously obtained the claimant's authorization to examine the claimant's medical records. Should the claimant subpoena medical records, the employer shall be served a copy. The party subpoenaing the records shall provide these records within fifteen calendar days of their receipt to the employer, claimant, and the special compensation fund if a joinder has been filed, or their representatives. These records shall be submitted by the party requesting the subpoena to the director within seven calendar days of the date of the notice of hearing or upon request by the director. A party who desires to enforce the director's subpoena shall seek enforcement from a court of competent jurisdiction.'

SECTION 9. Section 386-94, Hawaii Revised Statutes, is amended to read as follows:

**“§386-94 Attorneys, physicians, other health care providers, and other fees.** Claims for services shall not be valid unless approved by the director or, if an appeal is had, by the appellate board or court deciding the appeal. Any claim so approved shall be a lien upon the compensation in the manner and to the extent fixed by the director, the appellate board, or the court.

In approving fee requests, the director, appeals board, or court may consider factors such as the attorney's skill and experience in state workers' compensation matters, the amount of time and effort required by the complexity of the case, the novelty and difficulty of issues involved, the amount of fees awarded in similar cases, benefits obtained for the claimant, and the hourly rate customarily awarded attorneys possessing similar skills and experience. In all cases, reasonable attorney's fees shall be awarded.

Any person who receives any fee, other consideration, or gratuity on account of services so rendered, without approval, in conformity with the preceding paragraph, shall be fined by the director not more than \$10,000.”

SECTION 10. Section 386-96, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any physician, surgeon, or hospital that has given any treatment or rendered any service to an injured employee shall make a report of the injury and treatment on forms prescribed by and to be obtained from the department as follows:

- (1) Within seven days after the date of first attendance or service rendered, an initial report shall be made to the department and to the employer of the injured employee in the manner prescribed by the department;
- (2) Interim reports to the same parties and in the same manner as prescribed in paragraph (1) shall be made at appropriate intervals to verify the claimant's ~~[continuing treatment, periods of temporary disability, the extent of permanent disability, and other information determined necessary by the director;]~~ current diagnosis and prognosis, that the information as to the nature of the examinations and treatments performed is complete, including the dates of those treatments and the results obtained within the current reporting period, the execution of all tests performed within the current reporting period and the results of the tests, whether the injured employee is improving, worsening, or if “medical stabilization” has been reached, the dates of disability, any work restrictions, and the return to work date. When an injured employee is returned to full-time, regular, light, part-time, or restricted work, the attending physician shall submit a report to the employer within seven calendar days indicating the date of release to work or medical stabilization; and

- (3) A final report to the same parties and in the same manner as prescribed in paragraph (1) shall be made within seven days after termination of treatment.

No physician, surgeon, or hospital that has given any treatment or rendered any service to an injured employee shall be required to provide any additional reports not otherwise mandated by this section.”

SECTION 11. Section 386-98, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) In lieu of the criminal penalties set forth in subsection (d), any person who violates subsections (a) and (b) may be subject to the administrative penalties of restitution of benefits or payments fraudulently received under this chapter, whether received from an employer, insurer, or the special compensation fund, to be made to the source from which the compensation was received, and one or more of the following:

- (1) A fine of not more than \$10,000 for each violation;
- (2) Suspension or termination of benefits in whole or in part;
- (3) Suspension or disqualification from providing medical care or services, vocational rehabilitation services, and all other services rendered for payment under this chapter;
- (4) Suspension or termination of payments for medical, vocational rehabilitation and all other services rendered under this chapter;
- (5) Recoupment by the insurer of all payments made for medical care, medical services, vocational rehabilitation services, and all other services rendered for payment under this chapter; ~~or~~ and
- (6) Reimbursement of attorney’s fees and costs of the party or parties defrauded.”

SECTION 12. Section 386-121, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Employers, except the State, any county or political subdivision of the State, or other public entity within the State, shall secure compensation to their employees in one of the following ways:

- (1) By insuring and keeping insured the payment of compensation with any stock, mutual, reciprocal, or other insurer authorized to transact the business of workers’ compensation insurance in the State;
- (2) By depositing and maintaining with the state director of finance security satisfactory to the director of labor and industrial relations securing the payment by the employer of compensation according to the terms of this chapter;
- (3) Upon furnishing satisfactory proof to the director of the employer’s solvency and financial ability to pay the compensation and benefits herein provided, no insurance or security shall be required, and the employer shall make payments directly to the employer’s employees, as they may become entitled to receive the same under the terms and conditions of this chapter;
- (4) An employer desiring to maintain security for payment of compensation under this section shall file an application with the director on a form provided for this purpose together with the employer’s most current audited annual financial statement;
- (5) Where an applicant for self-insurance is a subsidiary and the subsidiary cannot submit an independent current audited annual financial statement, an indemnity agreement approved as to form and content by the

director shall be executed by the parent corporation of the subsidiary and submitted with its application;

- (6) Each self-insurance authorization shall be effective from the date of issuance until June 30 of each calendar year;
- (7) A notice of intention to cancel self-insurance shall be submitted in writing to the director within at least thirty days prior to the effective date of cancellation;
- (8) A self-insurance authorization may be revoked by the director for good cause shown upon notification in writing to the self-insurer;
- [4] (9) By membership in a workers' compensation self-insurance group with a valid certificate of approval under section 386-194; or
- [5] (10) By membership in a workers' compensation group insured by a captive insurer under chapter 431, article 19.

Any person who wilfully misrepresents any fact in order to obtain the benefits of paragraph (3) shall be guilty of a misdemeanor."

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 14. This Act shall take effect upon its approval; provided that sections 2, 3, and 7 of this Act shall take effect on January 1, 2005; provided further that section 7 shall be repealed on July 1, 2007, and section 386-72, Hawaii Revised Statutes, shall be reenacted in the form in which it read on December 31, 2004.

(Vetoed by Governor and veto overridden by Legislature on July 12, 2005.)

**Note**

1. Should be bracketed and stricken.

**ACT 12**

S.B. NO. 1877

A Bill for an Act Relating to the Office of Planning.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the Hawaii constitution gives the legislature express authority to allocate executive and administrative offices within no more than twenty principal executive departments. The legislature has enacted laws over the years to group executive and administrative offices according to common purposes and related functions.

The Hawaii Revised Statutes specifically establishes the office of planning within the department of business, economic development, and tourism and provides that the office of planning shall assist the department of business, economic development, and tourism in maintaining an overall framework to guide the development of the State. Among its other duties, the office of planning prepares the guidelines for the State functional plans and provides recommendations to the governor and state and county agencies on conflicts between the functional plans, the Hawaii State Planning Act, state programs, and county plans.

The legislature finds that the power to direct the office of planning to report to a principal department other than the department of business, economic development, and tourism rests solely with the legislature.

The purpose of this Act is to clarify that:

- (1) The department of business, economic development, and tourism maintains sole jurisdiction over land and state planning functions; and

- (2) The office of planning shall not report to any other principal executive department other than the department of business, economic development, and tourism.

SECTION 2. Section 201-2, Hawaii Revised Statutes, is amended to read as follows:

**“§201-2 General objective, functions, and duties of department.** It shall be the objective of the department of business, economic development, and tourism to make broad policy determinations with respect to economic development in the State and to stimulate through research and demonstration projects those industrial and economic development efforts ~~[which]~~ that offer the most immediate promise of expanding the economy of the State. The department shall endeavor to gain an understanding of those functions and activities of other governmental agencies and of private agencies ~~[which]~~ that relate to the field of economic development. It shall, at all times, encourage initiative and creative thinking in harmony with the objectives of the department.

The department of business, economic development, and tourism shall have sole jurisdiction over the land use commission under chapter 205, state planning under chapter 225M, and the Hawaii State Planning Act under chapter 226. Due to the inherently interdependent functions of development, planning, and land use, these functions shall not be transferred by executive order, directive, or memorandum, to any other department, nor shall these functions be subject to review or approval by any other department.”

SECTION 3. Section 225M-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

**“(a)** There is established within the department of business, economic development, and tourism an office of planning. The head of the office shall be known as the director of the office of planning, ~~[hereinafter]~~ referred to in this chapter as director. The director shall have: training in the field of urban or regional planning, public administration, or other related fields; experience in programs or services related to governmental planning; and experience in a supervisory, consultative, or administrative capacity. The director shall be nominated by the governor and, by and with the advice and consent of the senate, appointed by the governor without regard to chapter 76, and shall be compensated at a salary level set by the governor. The director shall be included in any benefit program generally applicable to the officers and employees of the State. The director shall retain such staff as may be necessary for the purposes of this chapter, in conformity with chapter 76. The director shall report to the director of business, economic development, and tourism and shall not be required to report directly to any other principal executive department.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Vetoed by Governor and veto overridden by Legislature on July 12, 2005.)

**COMMITTEE REPORTS ON BILLS ENACTED  
AND ON PROPOSED CONSTITUTIONAL AMENDMENT**

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**TABLES SHOWING EFFECT  
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| HB0008              | 021            | 1309                                       | 515, 893                                  |  |
| HB0019              | 138            | 1196, 1521                                 | 575, 888                                  | 145  |
| HB0020              | 137            | 1181, 1522                                 | 268, 902                                  |  |
| HB0078              | 005            | 1138                                       | 13, 711                                   |  |
| HB0079              | 008            | 1110                                       | 14, 710                                   |  |
| HB0081              | 028            | 1089, 1363                                 | 12, 387                                   |  |
| HB0098 <sup>1</sup> | 218            | 1151                                       | 471, 841                                  |  |
| HB0099              | 062            | 1175, 1611                                 | 320, 863                                  |  |
| HB0100              | 178            | 1486                                       | 816                                       | 100  |
| HB0109              | 205            | 1278, 1593                                 | 373                                       | 135  |
| HB0115              | 171            | 1198, 1622                                 | 238, 486, 727                             | 170  |
| HB0119              | 013            | 1296                                       | 699                                       |  |
| HB0125 <sup>1</sup> | 220            | 1178                                       | 128, 748                                  | 68   |
| HB0140              | 165            | 1257, 1596                                 | 249, 629, 800                             | 96   |
| HB0150              | 072            | 1044, 1462                                 | 465, 844                                  | 59   |
| HB0155              | 083            | 1431                                       | 137                                       |  |
| HB0160 <sup>2</sup> | Sp 1           | 1249, 1623                                 | 605, 864                                  | 171  |
| HB0161              | 088            | 1316                                       | 25  |  |
| HB0162              | 050            | 1107, 1496                                 | 528, 909                                  | 62   |
| HB0164              | 059            | 1100, 1407                                 | 5, 827                                    | 71   |
| HB0168              | 180            | 1059, 1573                                 | 539, 851                                  | 132  |
| HB0180 <sup>2</sup> | Sp 2           | 1177, 1857                                 | 106, 799                                  |  |
| HB0260              | 096            | 1077, 1548                                 | 688                                       | 141  |
| HB0263              | 098            | 1080, 1551                                 | 691                                       | 142  |
| HB0278              | 144            | 1210, 1526                                 | 642, 897                                  | 161  |
| HB0283              | 117            | 1101, 1564                                 | 99, 913                                   | 87   |
| HB0291              | 004            | 1150                                       | 523, 739                                  |  |
| HB0295              | 170            | 1128, 1364                                 | 62, 477, 870                              | 51   |
| HB0313              | 017            | 1297                                       | 129                                       |  |
| HB0320              | 135            | 1298                                       | 702                                       | 79   |
| HB0325 <sup>1</sup> | 243            | 1113, 1552                                 | 77, 732                                   | 95   |
| HB0384              | 086            | 1211, 1527                                 | 125, 883                                  | 80, 182  |
| HB0390              | 067            | 1056, 1609                                 | 433, 866                                  | 131  |
| HB0393              | 163            | 1193, 1598                                 | 316, 865                                  | 172  |
| HB0408              | 130            | 1246, 1512                                 | 302, 521, 928                             | 86   |
| HB0422 <sup>1</sup> | 217            | 1241, 1584                                 | 251, 848                                  | 83   |
| HB0437              | 033            | 1091, 1445                                 | 130                                       |  |
| HB0438              | 073            | 1092, 1446                                 | 703                                       | 81   |
| HB0447              | 107            | 1213, 1529                                 | 181, 882                                  |  |
| HB0450              | 109            | 1269, 1487                                 | 335, 1006                                 |  |
| HB0460              | 202            | 1221, 1586                                 | 659, 955                                  | 162  |
| HB0465              | 199            | 1025, 1858                                 | 660, 788                                  |  |
| HB0477              | 152            | 1174, 1417                                 | 250                                       | 72   |
| HB0496              | 018            | 1303                                       | 132                                       |  |
| HB0497              | 102            | 1215, 1859                                 | 540, 789                                  |  |
| HB0500              | 110            | 1270, 1488                                 | 673, 1007                                 | 99   |
| HB0502              | 074            | 1093, 1447                                 | 135                                       | 64   |

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| HB0515              | 177            | 1066                                       | 55  |  |
| HB0516              | 046            | 1137, 1517                                 | 218, 392, 903                             |  |
| HB0551              | 084            | 1141, 1408                                 | 768                                       | 65   |
| HB0553              | 085            | 1322                                       | 751                                       | 66   |
| HB0555              | 041            | 1040, 1760                                 | 802                                       |  |
| HB0556              | 042            | 1190, 1498                                 | 777                                       |  |
| HB0582              | 032            | 1106, 1409                                 | 136                                       |  |
| HB0606              | 069            | 1209, 1441                                 | 139, 817                                  | 53   |
| HB0624              | 024            | 1284                                       | 676                                       |  |
| HB0631              | 058            | 1116, 1607                                 | 76, 874                                   | 138  |
| HB0632              | 056            | 1115, 1860                                 | 457, 733                                  |  |
| HB0683              | 043            | 1047, 1518                                 | 592, 794                                  |  |
| HB0684              | 025            | 1191, 1519                                 | 360, 919                                  |  |
| HB0685              | 049            | 1410                                       | 775                                       |  |
| HB0712              | 128            | 1063, 1357                                 | 361, 839                                  | 54   |
| HB0758              | 191            | 1199, 1499                                 | 296, 885                                  |  |
| HB0769              | 052            | 1104, 1608                                 | 105, 479, 857                             | 61   |
| HB0785              | 082            | 1311                                       | 744                                       | 73   |
| HB0806              | 212            | 1300                                       | 752                                       | 82   |
| HB0835              | 081            | 1203, 1460                                 | 508, 822                                  |  |
| HB0841              | 179            | 1274, 1500                                 | 297, 724                                  | 136  |
| HB0843              | 071            | 1237, 1502                                 | 299, 886                                  | 57   |
| HB0844              | 159            | 1236, 1503                                 | 677                                       | 166  |
| HB0852              | 068            | 1264, 1411                                 | 552, 854                                  | 91   |
| HB0864              | 188            | 1142, 1412                                 | 550, 715                                  | 55   |
| HB0894              | 014            | 1301                                       | 698                                       |  |
| HB0895 <sup>1</sup> | 224            | 1266, 1358                                 | 555, 837                                  | 76   |
| HB0919              | 194            | 1095, 1449                                 | 424, 828                                  |  |
| HB0931              | 197            | 1173, 1615                                 | 553, 924                                  | 89   |
| HB1015              | 206            | 1180, 1514                                 | 416, 895                                  |  |
| HB1017              | 157            | 1267, 1605                                 | 146, 601, 858                             | 173  |
| HB1029              | 172            | 1132, 1504                                 | 488, 785                                  |  |
| HB1051 <sup>1</sup> | 241            | 1265, 1606                                 | 597, 825                                  | 169  |
| HB1118              | 030            | 1048, 1365                                 | 776                                       |  |
| HB1146 <sup>1</sup> | 238            | 1259, 1597                                 | 230, 614, 906                             |  |
| HB1154              | 063            | 1062, 1391                                 | 480, 820                                  |  |
| HB1201              | 182            | 1163, 1359                                 | 380, 834                                  | 77   |
| HB1202              | 181            | 1164, 1360                                 | 484, 835                                  | 78   |
| HB1221              | 022            | 1302                                       | 133                                       |  |
| HB1222              | 034            | 1405                                       | 756                                       |  |
| HB1224 <sup>2</sup> | Sp 3           | 1477                                       | 778                                       | 149  |
| HB1235 <sup>1</sup> | 222            | 1478                                       | 810                                       | 84   |
| HB1236              | 119            | 1479                                       | 803                                       | 85   |
| HB1238              | 079            | 1166, 1578                                 | 86, 348, 881                              | 60   |
| HB1276              | 175            | 1260, 1579                                 | 91, 668, 856                              | 92   |
| HB1295              | 186            | 1253, 1507                                 | 385, 938                                  | 69   |
| HB1300              | 151            | 1255, 1508                                 | 383, 939                                  | 167  |
| HB1301              | 051            | 1243, 1515                                 | 419, 784                                  | 93   |
| HB1304 <sup>1</sup> | 223            | 1192, 1520                                 | 151, 408, 974                             | 168  |
| HB1305 <sup>1</sup> | 035            | 1119, 1420                                 | 705                                       |  |
| HB1308              | 156            | 1261, 1591                                 | 473, 879                                  | 146  |

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| HB1309 <sup>1</sup> | 247            | 1096, 1569                                 | 162, 953                                  | 186  |
| HB1317 <sup>2</sup> | Sp 4           | 1275, 1524                                 | 71, 409, 908                              | 97   |
| HB1318              | 176            | 1118, 1553                                 | 344, 946                                  |  |
| HB1320              | 192            | 1194, 1525                                 | 171, 546, 898                             | 52   |
| HB1378 <sup>1</sup> | 242            | 1229, 1617                                 | 543, 970                                  | 183  |
| HB1393              | 147            | 1217, 1532                                 | 544, 942                                  | 163  |
| HB1413              | 053            | 1332                                       | 472, 849                                  |  |
| HB1430              | 105            | 1244, 1361                                 | 417, 838                                  | 75   |
| HB1453              | 160            | 1334                                       | 706                                       |  |
| HB1462              | 133            | 1481                                       | 805                                       | 148  |
| HB1476 <sup>1</sup> | 219            | 1065, 1566                                 | 495, 880                                  | 88   |
| HB1528 <sup>1</sup> | 225            | 1081, 1554                                 | 340, 1003                                 | 139  |
| HB1548 <sup>3</sup> | 250            | 1121, 1555                                 | 493, 947                                  | 174  |
| HB1550              | 207            | 1201, 1450                                 | 321, 842                                  | 58   |
| HB1555              | 075            | 1133, 1509                                 | 347, 859                                  | 56   |
| HB1556 <sup>1</sup> | 237            | 1057, 1570                                 | 466, 867                                  | 137  |
| HB1597              | 097            | 1085, 1559                                 | 695                                       | 143  |
| HB1599              | 099            | 1087, 1561                                 | 697                                       | 144  |
| HB1608 <sup>1</sup> | 245            | 1208, 1619                                 | 247, 675                                  | 140  |
| HB1614 <sup>1</sup> | 221            | 1235, 1562                                 | 343, 948                                  | 134  |
| HB1640              | 183            | 1281, 1592                                 | 194, 531, 968                             | 175  |
| HB1641 <sup>1</sup> | 234            | 1171, 1581                                 | 190, 295, 927                             | 133  |
| HB1657              | 080            | 1051, 1567                                 | 115, 912                                  | 63   |
| HB1659              | 129            | 1406                                       | 747                                       | 74   |
| HB1666              | 061            | 1483                                       | 812                                       |  |
| HB1668              | 103            | 1484                                       | 782                                       | 98   |
| HB1672              | 195            | 1485                                       | 809                                       | 150  |
| HB1709              | 187            | 1362                                       | 774                                       | 67   |
| HB1712              | 201            | 1324                                       | 701                                       |  |
| HB1715              | 214            | 1325                                       | 771                                       |  |
| HB1733              | 112            | 1273, 1534                                 | 648, 956                                  | 184  |
| HB1740              | 200            | 1219, 1535                                 | 545, 790                                  |  |
| HB1745              | 154            | 1158, 1536                                 | 127, 314, 984                             | 165  |
| HB1747              | 203            | 1459                                       | 772                                       | 185  |
| HB1749              | 124            | 1185, 1415                                 | 149, 549, 731                             |  |
| HB1750              | 113            | 1220, 1537                                 | 518, 899                                  | 90   |
| HB1758              | 106            | 1124, 1563                                 | 341, 734                                  | 94   |
| HB1763              | 125            | 1159, 1620                                 | 672, 957                                  | 164  |
| SB0003              | 168            | 329, 798                                   | 1198, 1494                                | 104  |
| SB0027              | 143            | 12, 962                                    | 1544                                      | 114  |
| SB0040              | 208            | 253, 698                                   | 1485                                      |  |
| SB0061              | 210            | 383, 971                                   | 1179, 1787                                |  |
| SB0073              | 003            | 54   | 1018, 1106                                |  |
| SB0076              | 066            | 56, 719                                    | 1223, 1492                                | 9  |
| SB0077              | 134            | 57, 739                                    | 1171, 1557                                | 2  |
| SB0116              | 116            | 422, 815                                   | 1141, 1603                                | 50   |
| SB0117              | 198            | 616  | 1050, 1254, 1568                          | 31   |
| SB0118              | 122            | 26, 658                                    | 1187, 1562                                | 41   |
| SB0119              | 002            | 650  | 1089                                      |  |
| SB0121              | 145            | 243, 693                                   | 1094, 1565                                | 15   |
| SB0122              | 115            | 325, 642                                   | 1073, 1196, 1489                          | 6  |



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| SB0179              | 196            | 20, 545, 764                               | 1214, 1632                                | 181  |
| SB0212 <sup>1</sup> | 228            | 29, 472, 915                               | 1143, 1633                                | 124  |
| SB0294 <sup>1</sup> | 240            | 90, 525, 988                               | 1182, 1573                                | 152  |
| SB0459              | 077            | 28, 801                                    | 1366                                      | 3  |
| SB0460              | 167            | 664  | 1546                                      |  |
| SB0527              | 169            | 516, 802                                   | 1154, 1525                                |  |
| SB0543              | 001            | 1  | 4   |  |
| SB0556 <sup>1</sup> | 244            | 149, 746                                   | 1245, 1490                                | 38   |
| SB0568              | 121            | 24, 934                                    | 1188, 1563                                | 42   |
| SB0608              | 039            | 417, 755                                   | 1290                                      |  |
| SB0615              | 012            | 128  | 1282                                      |  |
| SB0617              | 184            | 170, 835                                   | 1159, 1612                                | 125  |
| SB0620              | 111            | 130  | 1060, 1250, 1788                          |  |
| SB0621              | 048            | 131  | 1486                                      |  |
| SB0639              | 204            | 511, 948                                   | 1042, 1200, 1576                          | 16   |
| SB0667              | 044            | 306, 817                                   | 1114, 1579                                |  |
| SB0669              | 161            | 377, 916                                   | 1084, 1567                                | 109  |
| SB0673              | 055            | 132, 837                                   | 1164, 1611                                | 12   |
| SB0675              | 026            | 317, 700                                   | 1287                                      |  |
| SB0680 <sup>1</sup> | 227            | 421  | 1536                                      |  |
| SB0681              | 010            | 637  | 1281                                      |  |
| SB0682              | 131            | 172, 804                                   | 1075, 1270, 1609                          | 112  |
| SB0693              | 136            | 717  | 1291                                      | 17   |
| SB0698              | 047            | 188  | 1487                                      |  |
| SB0700              | 123            | 638  | 1288                                      | 11   |
| SB0702              | 108            | 597, 747                                   | 1127, 1507                                | 36   |
| SB0708              | 045            | 600, 998                                   | 1266, 1617                                | 126  |
| SB0738              | 057            | 523, 852                                   | 1103, 1618                                | 153  |
| SB0754              | 132            | 653  | 1128, 1508                                | 18   |
| SB0761              | 140            | 119, 674                                   | 1189, 1558                                | 5  |
| SB0768              | 054            | 655  | 1191, 1509                                |  |
| SB0778              | 006            | 45, 779                                    | 1293                                      |  |
| SB0780              | 016            | 741  | 1292                                      |  |
| SB0781              | 029            | 120, 728                                   | 1083, 1510                                |  |
| SB0782              | 007            | 121, 805                                   | 1294                                      |  |
| SB0789              | 015            | 330, 960                                   | 1299                                      |  |
| SB0791              | 139            | 581, 806                                   | 1079, 1255, 1626                          | 106  |
| SB0797              | 120            | 617  | 1204, 1496                                | 34   |
| SB0802              | 209            | 559, 807                                   | 1244, 1631                                | 113  |
| SB0807 <sup>1</sup> | 226            | 485, 854                                   | 1184, 1622                                | 107  |
| SB0813 <sup>3</sup> | 249            | 488, 855                                   | 1221, 1620                                | 127  |
| SB0817              | 114            | 489, 989                                   | 1547                                      | 154  |
| SB0834              | 060            | 615, 914                                   | 1550                                      |  |
| SB0840              | 027            | 663  | 1096, 1524                                |  |
| SB0842              | 023            | 662  | 1365                                      |  |
| SB0944              | 094            | 668  | 1368                                      | 155  |
| SB0945              | 100            | 669  | 1369                                      | 156  |
| SB0956              | 064            | 621  | 1404                                      | 27   |
| SB0960 <sup>2</sup> | Sp 5           | 542, 902                                   | 1099, 1493                                | 108  |
| SB0962 <sup>1</sup> | 229            | 492, 725                                   | 1264, 1634                                | 129  |
| SB1003              | 104            | 88, 935                                    | 1120, 1564                                | 7  |

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| SB1018              | 150            | 731  | 1364                                      | 22   |
| SB1038              | 166            | 66, 904                                    | 1021, 1233, 1614                          | 101  |
| SB1100              | 193            | 441, 936                                   | 1540                                      | 40   |
| SB1117              | 078            | 82, 772                                    | 1101, 1512                                | 19   |
| SB1127              | 211            | 407, 905                                   | 1205, 1789                                |  |
| SB1132              | 093            | 81, 774                                    | 1130, 1520                                | 179  |
| SB1140              | 038            | 673  | 1539                                      |  |
| SB1170              | 065            | 544, 645                                   | 1538                                      |  |
| SB1210              | 020            | 152, 702                                   | 1295                                      |  |
| SB1230              | 011            | 103, 675                                   | 1280                                      |  |
| SB1235              | 040            | 640  | 1124, 1495                                |  |
| SB1249              | 019            | 42   | 1296                                      |  |
| SB1250              | 070            | 475, 990                                   | 1212, 1597                                | 111  |
| SB1253              | 174            | 47   | 1327                                      | 13   |
| SB1262 <sup>2</sup> | Sp 6           | 87, 958                                    | 1152, 1501                                | 121  |
| SB1267 <sup>1</sup> | 233            | 343, 920                                   | 1119, 1505                                | 49   |
| SB1285              | 153            | 171, 659                                   | 1541                                      | 43   |
| SB1336              | 091            | 546, 751                                   | 1542                                      |  |
| SB1345              | 092            | 83, 752                                    | 1048, 1790                                |  |
| SB1348              | 090            | 690  | 1283                                      | 30   |
| SB1349              | 089            | 716  | 1284                                      | 20   |
| SB1362              | 162            | 722  | 1058, 1219, 1513                          | 47   |
| SB1378              | 127            | 463, 759                                   | 1142, 1583                                | 10   |
| SB1394              | 141            | 268, 787                                   | 1225, 1607                                | 117  |
| SB1419              | 142            | 561, 810                                   | 1785                                      |  |
| SB1420 <sup>1</sup> | 239            | 607, 814                                   | 1080, 1273, 1592                          | 105  |
| SB1427 <sup>1</sup> | 216            | 374, 959                                   | 1111, 1502                                | 25   |
| SB1451 <sup>1</sup> | 248            | 571, 922                                   | 1064, 1234, 1514                          | 110  |
| SB1453              | 146            | 208, 776                                   | 1053, 1193, 1503                          | 21   |
| SB1473 <sup>2</sup> | Sp 7           | 580, 715                                   | 1113, 1516                                | 35   |
| SB1478              | 190            | 69, 832                                    | 1786                                      |  |
| SB1483              | 076            | 370, 788                                   | 1134, 1499                                | 1  |
| SB1579              | 095            | 200, 872                                   | 1376                                      | 158  |
| SB1580              | 101            | 201, 873                                   | 1377                                      | 159  |
| SB1592 <sup>2</sup> | Sp 8           | 184, 925                                   | 1055, 1615                                | 102  |
| SB1620 <sup>1</sup> | 236            | 604, 996                                   | 1077, 1222, 1628                          | 123  |
| SB1643              | 087            | 234, 995                                   | 1227, 1577                                | 119  |
| SB1660              | 189            | 584, 954                                   | 1086, 1523                                | 44   |
| SB1661              | 158            | 43, 793                                    | 1228, 1500                                | 116  |
| SB1680              | 009            | 17   | 1279                                      |  |
| SB1685 <sup>2</sup> | Sp 9           | 162, 833                                   | 1552                                      | 14   |
| SB1699              | 149            | 366, 890                                   | 1300                                      | 45   |
| SB1702              | 173            | 166, 891                                   | 1045, 1596                                | 46   |
| SB1713              | 037            | 315, 812                                   | 1543                                      |  |
| SB1721 <sup>1</sup> | 231            | 578, 892                                   | 1229, 1616                                | 37   |
| SB1729 <sup>1</sup> | 235            | 459, 997                                   | 1102, 1608                                | 177  |
| SB1732 <sup>1</sup> | 215            | 77, 910                                    | 1211, 1517                                | 103  |
| SB1772 <sup>2</sup> | Sp 10          | 261, 827                                   | 1071, 1272, 1572                          | 23   |
| SB1778 <sup>1</sup> | 230            | 85, 1002                                   | 1149, 1571                                | 29   |
| SB1780              | 148            | 614, 964                                   | 1248, 1610                                | 120  |
| SB1798              | 155            | 632  | 1285                                      | 28   |

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| SB1802              | 031            | 656  | 1049, 1521                                |  |
| SB1808 <sup>2</sup> | Sp 11          | 498, 993                                   | 1263, 1527                                | 130  |
| SB1814 <sup>1</sup> | 246            | 274, 794                                   | 1043, 1217, 1578                          | 118  |
| SB1816              | 213            | 585, 955                                   | 1268, 1621                                | 115  |
| SB1864              | 036            | 285, 847                                   | 1161, 1566                                |  |
| SB1872              | 118            | 262, 829                                   | 1488                                      | 24   |
| SB1876              | 185            | 67, 913                                    | 1269, 1630                                | 48   |
| SB1877 <sup>2</sup> | Sp 12          | 183, 927                                   | 1109, 1629                                | 26   |
| SB1883 <sup>1</sup> | 232            | 350, 929                                   | 1362                                      | 32   |
| SB1891              | 126            | 447, 930                                   | 1209, 1584                                | 33   |
| SB1903              | 164            | 352, 942                                   | 1034, 1150, 1559                          | 8  |

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| SB1256 |  | 427, 696 | 1069, 1251, 1587 |  |
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#### Notes

1. Became law without the Governor's signature.
2. Vetoed by Governor and veto overridden by Legislature on July 12, 2005.
3. Assigned Act number by legislature.







| HRS<br>Section No.                            | Effect | Affected<br>By Act No. | HRS<br>Section No.   | Effect | Affected<br>By Act No. |
|---|--------|------------------------|----------------------|--------|------------------------|
| 346-312.5                                     | Am     | 22                     |                      |        |                        |
| 349-2   | Am     | 226                    |                      |        |                        |
| 351-62.6                                      | Am     | 144                    |                      |        |                        |
| 353-25 (heading)                              | Am     | 22                     |                      |        |                        |
| 353-26  | Am     | 22                     |                      |        |                        |
| 353-63  | Am     | 226                    |                      |        |                        |
| 353-66  | Am     | 22                     |                      |        |                        |
| 353B-2, 3                                     | Am     | 111                    |                      |        |                        |
| 353B-4  | Am     | 154                    |                      |        |                        |
| 363-2   | Am     | 226                    |                      |        |                        |
| 367-2   | Am     | 147                    |                      |        |                        |
| 371-4   | Am     | 226                    |                      |        |                        |
| 371-7, 8                                      | Am     | Sp 11                  |                      |        |                        |
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| 378-2.5                                       | Am     | 93                     |                      |        |                        |
| 383-23.5                                      | Am     | 106                    |                      |        |                        |
| 383-66  | Am     | 114                    |                      |        |                        |
| 383-123                                       | Am     | 249                    |                      |        |                        |
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| 386-1, 25, 26, 31, 72,<br>86, 94, 96, 98, 121 | Am     | Sp 11                  |                      |        |                        |
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| 387-9   | Am     | 191                    |                      |        |                        |
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**D. SECTIONS OF STATE CONSTITUTION AFFECTED**

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